Stephenson

EX LIBRIS

GILBERT THOMAS STEPHENSON

DR. NORMAN A. WIGGINS

Gilbert T. Stephenson,
Harvard.

10 May, 1906.

PROCEEDINGS

OF THE

American

Political Science Association,

AT ITS

Second Annual Meeting

HELD AT

BALTIMORE, MD., DECEMBER 26 to 29, 1905.

DR. NORMAN A. WIGGINS

WICKERSHAM PRESS,
LANCASTER, PA.
1906.

Copyright, 1906, by
THE AMERICAN POLITICAL SCIENCE ASSOCIATION.

TABLE OF CONTENTS.

PAGE

The American Political Science Association:

Constitution 5
Officers for the year 1905 7
Officers for the year 1906 8
List of Members 9

The Second Annual Meeting of the Association:

Report of the Treasurer 19
Report of the Secretary 21
Programme 27

Papers and Discussions:

The Growth of Executive Discretion. By Frank J. Goodnow . . . 29
The Use of Neutral Waters by Belligerents. By John Holladay Latané 45
The Relations of England and the United States as Affected by the Far-Eastern Question. By Amos S. Hershey 59
The Comparative Results, in the Advancement of Private International Law, of the Montevideo Congress of 1888–9 and the Hague Conferences of 1893, 1894, 1900, and 1904. By Simeon E. Baldwin, LL. D 73
Discussion: Arthur K. Kuhn 87
The Case for Municipal Ownership. By Frederic C. Howe . . . 89
Municipal Ownership. By Winthrop M. Daniels 105
Discussion: L. S. Rowe, John A. Fairlie, Milo R. Maltbie, J. Dorsey Forrest, Albert Shaw, Jeremiah W. Jenks, Richard T. Ely, F. B. Thurber 113
The Cabinet and Congress: An Historical Inquiry. By Mary L. Hinsdale 126
The Realities of Negro Suffrage. By Albert Bushnell Hart 149
Suffrage Conditions in the South: The Constitutional Point of View. By John C. Rose 166
Discussion: John Martin, S. C. Mitchell, Henry E. Shepherd . . . 166
Racial Distinctions in Southern Law. By Gilbert T. Stephenson . 170
Corrupt Practices and Election Laws in the United States. By George L. Fox 171
State Interference. By Theodore Marburg 187
The Scope of Political Science. By Henry Jones Ford 198
What Do Students Know About American Government Before Taking College Courses in Political Science? By William A. Schaper 207
Report of the Meeting of the Section on Comparative Legislation . 229

001091

CONSTITUTION

OF

The American Political Science Association

ARTICLE I.

NAME.

This Association shall be known as the American Political Science Association.

ARTICLE II.

OBJECT.

The encouragement of the scientific study of Politics, Public Law, Administration and Diplomacy.

The Association as such will not assume a partisan position upon any question of practical politics, nor commit its members to any position thereupon.

ARTICLE III.

MEMBERSHIP.

Any person may become a member of this Association upon payment of Three Dollars, and after the first year may continue such by paying an annual fee of Three Dollars. By a single payment of Fifty Dollars any person may become a life member, exempt from annual dues.

Each member will be entitled to a copy of all the publications of the Association issued during his or her membership.

ARTICLE IV.

OFFICERS.

The officers of this Association shall consist of a President, three Vice-Presidents, a Secretary, and a Treasurer, who shall be elected annually, and of an Executive Council consisting *ex-officio* of the officers above mentioned and ten elected members, whose term of office shall be two years, except that of those selected at the first election, five shall serve for but one year.

All officers shall be nominated by a Nomination Committee composed of five members appointed by the Executive Council, except that the officers for the first year shall be nominated by a committee of three to be appointed by the chairman of the meeting at which this Constitution is adopted.

All officers shall be elected by a majority vote of the members of the Association present at the meeting at which the elections are had.

ARTICLE V.

DUTIES OF OFFICERS.

The President of this Association shall preside at all meetings of the Association and of the Executive Council, and shall perform such other duties as the Executive Council may assign to him. In his absence his duties shall devolve successively upon the Vice-Presidents in the order of their election, upon the Secretary and the Treasurer.

The Secretary shall keep the records of the Association and perform such other duties as the Executive Council may assign to him.

The Treasurer shall receive and have the custody of the funds of the Association, subject to the rules of the Executive Council.

The Executive Council shall have charge of the general interests of the Association, shall call regular and special meetings of the Association, appropriate money, appoint Committees and their chairmen, with appropriate powers, and in general possess the governing power in the Association, except as otherwise specifically provided in this Constitution. The Executive Council shall have the power to fill vacancies in its membership occasioned by death, resignation or failure to elect, such appointees to hold office until the next annual election of officers.

Five members shall constitute a quorum of the Executive Council, and a majority vote of those in attendance shall control its decisions.

Ten members shall constitute a quorum of the Association and a majority vote of those members in attendance shall control its decisions.

ARTICLE VI.

RESOLUTIONS.

All resolutions to which an objection shall be made shall be referred to the Executive Council for its approval before submission to the vote of the Association.

ARTICLE VII.

AMENDMENTS.

Amendments to this Constitution shall be proposed by the Executive Council and adopted by a majority vote of the members present at any regular or special meeting of the Association.

OFFICERS

OF

The American Political Science Association

FOR THE YEAR 1905

PRESIDENT.

FRANK J. GOODNOW, Columbia University.

FIRST VICE-PRESIDENT.

ALBERT SHAW, New York City.

SECOND VICE-PRESIDENT.

J. W. JENKS, Cornell University.

THIRD VICE-PRESIDENT.

J. N. JUDSON, St. Louis, Mo.

SECRETARY AND TREASURER.

W. W. WILLOUGHBY, Johns Hopkins University, Baltimore, Md.

EXECUTIVE COUNCIL.

President, Vice-Presidents, Secretary and Treasurer, *ex-officio.*

J. A. FAIRLIE, University of Michigan.
C. H. HUBERICH, University of Texas.
H. P. JUDSON, University of Chicago.
JESSE MACY, Iowa College.
BERNARD MOSES, University of California.
L. S. ROWE, University of Pennsylvania.
W. A. SCHAPER, University of Minnesota.
P. S. REINSCH, University of Wisconsin.
G. G. WILSON, Brown University.
J. A. WOODBURN, University of Indiana.

OFFICERS

OF

The American Political Science Association

FOR THE YEAR 1906

PRESIDENT.
ALBERT SHAW, New York City.

FIRST VICE-PRESIDENT.
ALBERT BUSHNELL HART, Harvard University.

SECOND VICE-PRESIDENT.
F. N. JUDSON, St. Louis, Mo.

THIRD VICE-PRESIDENT.
H. A. GARFIELD, Princeton University.

SECRETARY AND TREASURER.
W. W. WILLOUGHBY, Johns Hopkins University, Baltimore, Md.

EXECUTIVE COUNCIL.

President, Vice-Presidents, Secretary and Treasurer, *ex-officio.*

J. A. FAIRLIE, University of Michigan.
J. H. LATANÉ, Washington and Lee University.
H. P. JUDSON, University of Chicago.
F. J. GOODNOW, Columbia University.
B. F. SHAMBAUGH, University of Iowa.
L. S. ROWE, University of Pennsylvania.
W. A. SCHAPER, University of Minnesota.
P. S. REINSCH, University of Wisconsin.
G. G. WILSON, Brown University.
J. A. WOODBURN, University of Indiana.

List of Members

Adams, H. C., Madison, Wis.
Adickes, F. Herr Oberburgermeister, Frankfort-on-the-Main, Germany.
Ames, Charles H., 120 Boylston St., Boston, Mass.
Ashley, R. L., 730 W. 16th St., Los Angeles, Cal.

Babb, J. E. Lewiston, Idaho.
Baetjer, E. J., 1409 Continental Bldg., Baltimore, Md.
Bagge, Gosta, 19 Birgerjorlsgatan, Stockholm, Sweden.
Baker, Alfred L., 209 La Salle St., Chicago, Ill.
Baldwin, Simeon Eben, 69 Church St., New Haven, Conn.
Barnard, James Lynn, 13 E. Nyack Ave., Lansdowne, Pa.
Barnett, James D., University of Wisconsin, Madison, Wis.
Barrett, R. C., Iowa State College of Agriculture and Mechanic Arts, Ames, Iowa.
Barstow, C. L., The Century Co., Union Square, N. Y.
Bates, Charles W., City Hall, St. Louis, Mo.
Bates, Victoria Williams, The Mt. Royal, Baltimore, Md.
Beddall, Marcus M., 327 Story St., Boone, La.
Beer, George Louis, 329 W. 71st St., New York City.
Beer, William, Howard Memorial Library, New Orleans, La.
Benneson, Miss Cora A., 4 Mason St., Cambridge, Mass.
Benton, E. J., Adelbert College, Cleveland, O.
Bigelow, Melville M., Boston University Law School, Boston, Mass.
Bigelow, Poultney, Boston University, Boston, Mass.
Bingham, Hiram, Washington Road, Princeton, N. J.
Bondy, William, 149 Broadway, New York City.
Boston Public Library, Boston, Mass.
Bowman, Harold M., Hanover, N. H.
Boyle, E. Mortimer, 179 W. 88th St., New York City.
Bradford, Gamaliel, 529 Exchange Bldg., Boston, Mass.
Braxton, A. C., Staunton, Va.
Brown, W. E., Rhinelander, Wis.
Bryan, Joseph, 28 Times Bldg., Richmond, Va.

Buckler, Wm. H., "Evergreen," W. North Ave., Baltimore, Md.
Bullowa, F. E. M., 32 Nassau St., New York City.
Burnett, Geo. R., Blees Military Academy, Macon, Mo.
Butler, John A., Milwaukee, Wis.

Caldwell, Howard Walter, University of Nebraska, Lincoln, Neb.
Callahan, J. M., University of West Virginia, Morganton, W. Va.
Campbell, R. G., Johns Hopkins University, Baltimore, Md.
Cator, George, Maryland Club, Baltimore, Md.
Chapin, Charles V., Providence, R. I.
Chapin, Robert Coit, Beloit College, Beloit, Wis.
Chicago Public Library, Chicago, Ill.
Clark, Charles A., 800 First Ave., Cedar Rapids, Ia.
Clark, W. E., College of the City of New York, N. Y.
Cleveland, F. A., 30 Broad St., New York City.
Clow, Fred. R., State Normal, Oshkosh, Wis.
Colby, James F., Dartmouth College, Hanover, N. H.
Coker, F. W., Columbia University, New York City.
Cole, T. L., Statute Law Book Co., Colorado Bldg., Washington, D. C.
Cook, W. W., University of Missouri, Columbia, Mo.
Coudert, Frederic R., 71 Broadway, New York City.
Crane, R. T., Johns Hopkins University, Baltimore, Md.
Creagh, John T., Catholic University, Washington, D. C.
Cutting, R. Fulton, 32 Nassau St., New York City.

Daish, John Broughton, attorney-at-law, Washington, D. C.
Davis, John, 515 Cass Ave., Detroit, Mich.
Dawkins, Walter I., 408 Fidelity Bldg., Baltimore, Md.
Dealey, J. Q., Brown University, R. I.
Deemer, Horace E., Des Moines, Iowa.
Dennis, Alfred P., Smith College, Northampton, Mass.
Dern, George H., 36 H St., Salt Lake City, Utah.
Dixon, Frank H., Dartmouth College, Hanover, N. H.
Dodd, W. F., 210 A St., S. E., Washington, D. C.
Duniway, C. A., Leland Stanford University, Cal.
Dunlap, Boutwell, Catholic University, Washington, D. C.
Dunning, William A., Columbia University, N. Y.
Dutcher, G. W., Wesleyan University, Middletown, Conn.

Eames, Burton E., 113 Devonshire St., Boston, Mass.

Edmonds, Franklin Spencer, Central High School, Philadelphia, Pa.
Egleston, Melville, 26 Cortland St., New York City.
Elkus, Abram S., 50 Pine St., New York City.
Elliott, E. G., Princeton University, Princeton, N. J.
Erickson, Halford, Madison, Wis.
Evans, Lawrence B., Tufts College, Mass.
Evans, Roland, P. O. Bldg., Indianapolis, Ind.

Fairlie, John Archibald, 524 S. State St., Ann Arbor, Mich.
Falkner, Roland Post, San Juan, Porto Rico.
Farnam, Henry Walcott, 43 Hillhouse Ave., New Haven, Conn.
Farrand, Max, Leland Standford University, Cal.
Faulkner, C. E., Minneapolis, Minn.
Ferguson, Henry, Trinity College, Hartford, Conn.
Ficklen, John R., Tulane University, New Orleans, La.
Finley, John Houston, College of the City of New York, N. Y.
Fischer, W. J., National Bank of Commerce, Detroit, Mich.
Flack, H. C., Johns Hopkins University, Baltimore, Md.
Foote, Allen R., Home Insurance Bldg., Chicago, Ill.
Ford, Henry J., 2126 Mt. Royal Terrace, Baltimore, Md.
Ford, Worthington C., Library of Congress, Washington, D. C.
Fox, George L., University School, New Haven, Conn.
Freund, Ernst, University of Chicago, Chicago, Ill.
Friedenwald, Herbert, 915 N. 16th St., Philadelphia, Pa.

Gannaway, John W., Milwaukee Journal, Milwaukee, Wis.
Gardiner, Rathbone, Providence, R. I.
Gardner, Henry B., 54 Stimson Ave., Providence, R. I.
Garfield, H. A., Princeton University, Princeton, N. J.
Garner, J. W., University of Illinois, Urbana, Ill.
Garrett, Robert, Continental Trust Bldg., Baltimore, Md.
Garrison, George Pierce, University of Texas, Austin, Tex.
Garver, F. H. Moringside College, Sioux City, Ia.
Glasson, William H., Trinity College, Durham, N. C.
Goodnow, Frank J., Columbia University, New York City.
Goodwin, Elliot H., 79 Wall St., New York City.
Gould, E. R. L., 281 Fourth Ave., New York City.
Goulder, Harvey D., Perry-Payne Bldg., Cleveland, O.
Gray, John Henry, Northwestern University, Evanston, Illinois.
Gregory, Charles Noble, University of Iowa, Iowa City, Ia.
Grosvenor, E. A., Amherst College, Amherst, Mass.

Hadden, E. H., University of Kansas, Lawrence, Kan.
Hammond, John H., 59 Wall St., New York City.
Harding, Albert Spencer, South Dakota Agricultural College, Brookings, S. Dak.
Harrison, Lynde, Exchange Bldg., New Haven, Conn.
Hart, Albert Bushnell, Harvard University, Cambridge, Mass.
Hart, Mrs. Albert Bushnell, 19 Crargie St., Cambridge, Mass.
Hart, W. O., 134 Carondelet St., New Orleans, La.
Hartshorne, Charles H., 239 Washington St., Jersey City, N. J.
Haskins, Charles Homer, 15 Prescott Hall, Harvard University, Cambridge, Mass.
Hatten, W. H., New London, Wisconsin.
Hatton, A. R., University of Chicago, Chicago, Ill.
Hawkins, Harold B., 423 Wisconsin Ave., Madison, Wis.
Haynes, George H., Worcester, Mass.
Hazard, Caroline, Wellesley College, Wellesley, Mass.
Hebberd, Robert W., New York State Board of Charities, Capitol, Albany, N. Y.
Henderson, Ernest F., 1 Mercer Circle, Cambridge, Mass.
Hepburn, A. B., 83 Cedar St., New York City.
Hershey, A. S., Indiana State University, Bloomington, Ind.
Holmes, George K., Dept. of Agriculture, Washington, D. C.
Holt, Henry, 29 W. 23d St., New York City.
Horack, F. E. University of Iowa, Iowa City, Ia.
Horwood, H. A., 44 Walker St., New York City.
Howard, B. E., Cambridge, Mass.
Howe, W. W., 708 Union St., New Orleans, La.
Huberich, C. H., University of Texas, Austin, Tex.
Hudson, Gardner K., Fitchburg, Mass.
Hull, Charles Henry, Cornell University, Ithaca, N. Y.

Iles, George, Park Avenue Hotel, New York City.

Jenks, Jeremiah W., Cornell University, Ithaca, N. Y.
John Crerar Library, Chicago, Ill.
Johns Hopkins University Library, Baltimore, Md.
Johnson, Allen, Bowdoin College, Brunswick, Me.
Johnson, E. H., Emory College, Oxford, Ga.
Johnston, John, Marine National Bank, Milwaukee, Wis.
Judson, F. N., 500-506 Rialto Bldg., St. Louis, Mo.
Judson, H. P., University of Chicago, Chicago, Ill.

Keasbey, Lindley Miller, University of Texas, Austin, Tex.
Kellogg, Charles P., Waterbury, Conn.

Kelly, Edmond, 82 Boulevard Haussmann, Paris, France.
Kent, Charles A., Detroit, Mich.
Kern, John W., State Life Bldg., Indianapolis, Ind.
Knapp, Martin A., Chairman Interstate Commerce Commission, Washington, D. C.
Kuhn, Arthur K., 42 Broadway, New York City.

Lacy, B. W., Dubuque, Iowa.
Lacock, John Kennedy, 21 Carver St., Cambridge, Mass.
Latané, John Holladay, Washington and Lee Univerity, Lexington, Va.
Lawson, Victor F., 123 Fifth Ave., Chicago, Ill.
Lee, G. C., 1707 Bolton St., Baltimore, Md.
Legg, Chester Arthur, 10 Oxford St., Cambridge, Mass.
Library of Parliament, Ottawa, Canada.
Loeb, Isidor, University of State of Missouri, Columbia, Mo.
Logan, Walter S., 27 William St., New York City.
Loos, I. A., University of Iowa, Iowa City, Ia.
Low, A. Maurice, 1410 G St., Washington, D. C.
Lowell, A. Lawrence, 843 Exchange Bldg., Boston, Mass.
Lowell, Francis C., Boston, Mass.
Ludington, Arthur Crosby, Princeton University, Princeton, N. J.

McBain, Howard Lee, Columbia University, New York City.
McCarthy, Charles (Legislative Librarian), Madison, Wis.
McCormick, S. B., 703 Home Trust Bldg., Pittsburg, Pa.
MacDonald, William, 127 Waterman St., Providence, R. I.
McKechan, Charles L., 711 Bullitt Bldg., Philadelphia, Pa.
McKeehan, Joseph P., Dickinson School of Law, Carlisle, Pa.
McLaughlin, A. C., University of Michigan, Ann Arbor, Mich.
MacLean, J. A., University of Idaho, Moscow, Idaho.
McNulty, John J., College of the City of New York, N. Y.
McNulty, William D., 141 Broadway, New York City.
McPherson, Logan G., 1300 Pennsylvania Ave., Washington, D. C.
Macy, Jesse, Iowa College, Grinnell, Iowa.
Maine, Library of University of, Orono, Me.
Malden Public Library, Malden, Mass.
Maltbie, Milo Roy, 52 Williams St., New York City.
Marburg, Theodore, 14 W. Mt. Vernon Place, Baltimore, Md.
Martin, John, Stapleton, N. Y.

Mather, Samuel, Western Reserve Bldg., Cleveland, O.
Mechern, Floyd R., 5828 Woodlawn Ave., Chicago, Ill.
Mercer, H. V., Minneapolis, Minn.
Merriam, C. E., University of Chicago, Chicago, Ill.
Michigan State Normal College, Ypsilanti, Mich.
Milburn, Richard M., Jasper, Ind.
Miller, E. T., University of Texas, Austin, Tex.
Minor, Raleigh C., University of Virginia, Charlottesville, Va.
Missouri, University of, Columbia, Mo.
Moffett, Samuel E., 16 Archer Ave., Mt. Vernon, N. Y.
Moore, John Bassett, Columbia University, N. Y.
Moran, Thos. Francis, Purdue University, Lafayette, Ind.
Morey, William Carey, Rochester University, Rochester, N. Y.
Morris, Henry C., 100 Washington St., Chicago, Ill.
Morrisson, James N., Richmond, Ind.
Morse, A. D., Amherst College, Amherst, Mass.
Moses, Bernard, University of California, Berkeley, Cal.
Mount Holyoke College Library, South Hadley, Mass.
Mulkey, Frederick W., Mulkey Block, Portland, Ore.
Munro, Wm. B., 37 Dana Chambers, Cambridge, Mass.

Needham, C. W., George Washington University, Washington, D. C.
Neill, Chas. P., 1429 N. Y. Ave., Washington, D. C.
Nelson, H. L., Williams College, Williamstown, Mass.
Newberry Library, Chicago, Ill.
Newcomb, Harry Turner, Bond Bldg., Washington, D. C.
New York Public Library, Astor Library Bldg., New York City.
New York State Library, Albany, N. Y.
Nicholson, Edward K., Sanford Bldg., Bridgeport, Conn.
Nieman, L. W., The Milwaukee Journal, Milwaukee, Wis.
Norton, J. Pease, 563 Orange St., New Haven, Conn.

Omaha Public Library, Omaha, Neb.
Ontario Legislative Library, Toronto, Ontario, Canada.
Opdyke, Wm. S., 20 Nassau St., New York City.

Parker, F. W., Marquette Bldg., Chicago, Ill.
Parkinson, J. B., Madison, Wis.
Parsons, Samuel J., 135 E. 15th St., New York City.
Peterson, Samuel, University of Texas, Austin, Texas.
Philbrick, Francis S., 363 W. 123 St., New York City.
Plum, H. G., University of Iowa, Iowa City, Ia.

Prescott, A. T., Baton Rouge, La.

Reeves, Jesse S., Richmond, Ind.
Reinsch, Paul S., University of Wisconsin, Madison, Wis.
Ripton, B. H., Union College, Schenectady, N. Y.
Robinson, Maurice Henry, University of Illinois, Urbana, Ill.
Rose, John C., 628 Equitable Bldg., Baltimore, Md.
Rowe, Leo S., University of Pennsylvania, Philadelphia, Pa.
Rudd, Channing, George Washington University, Washington, D. C.
Rutter, Frank R., Dept. of Agriculture, Washington, D. C.

Sanborn, J. B., Madison, Wis.
Schaper, William A., University of Minnesota, Minneapolis, Minn.
Schofield, William, 19 Gould Ave., Malden, Mass.
Schouler, James, 60 Congress St., Boston, Mass.
Scott, G. W., Library of Congress, Washington, D. C.
Scott, J. B., Columbia University, New York City.
Scovel, Sylvester F., Univ. of Wooster, Wooster, O.
Seager, Henry R., Columbia University, New York City.
Seligman, E. R. A., 324 W. 86th St., N. Y. City.
Senties, P. J., 2 A de Arquitectos No. 1, City of Mexico.
Shambaugh, B. F., State University, Iowa City, Ia.
Sharp, George M., 2105 St. Paul St., Baltimore, Md.
Shaw, Albert, 13 Astor Place, New York City.
Shea, James Edward, 845 Tremont Bldg., Boston, Mass.
Shepard, Edward M., 26 Liberty St., New York City.
Siebert, Wilbur Henry, 182 W. 10th Ave., Columbus, O.
Sioussat, St. George L., University of the South, Sewanee, Tenn.
Sites, C. M. Lacey, Nanyang, Shanghai, China.
Smalley, H. S., University of Michigan, Ann Arbor, Mich.
Smith College Library, Northampton, Mass.
Smith, Howard L., 222 Langdon St., Madison, Wis.
Smith, Monroe, Columbia University, New York City.
Snow, A. H., 2013 Massachusetts Ave., N. W., Washington, D. C.
Sparling, S. E., Madison, Wis.
Speranza, Gino, 40 Pine St., New York City.
Springfield City Library Association, Springfield, Mass.
Stanclift, Henry C., Cornell College, Mt. Vernon, Iowa.
Steiner, Bernard C., Johns Hopkins University, Baltimore, Md.
Stephenson, G. J., 14 Oxford St., Cambridge, Mass.

Stevens, E. Ray, Madison, Wis.
Stirling, Thomas, Law Dept., State University, Vermillion, S. Dak.
Stockbridge, Henry, Law Bldg., Baltimore, Md.
Stratton, Daniel, Tulsa, Indian Terr.
Straus, Isidor, Broadway and 34th St., New York City.
Strong, Josiah, 287 Fourth Ave., New York City.
Stroock, Sol. M., 320-324 Broadway, New York City.
Sullivan, James, 308 W. 97th St., New York City.

Tanaka, I., Librarian, Imperial Library of Japan, Uyeno Park, Tokyo, Japan.
Tarrant, W. D., Court House, Milwaukee, Wis.
Teele, R. P., Department of Agriculture, Washington, D. C.
Temple, Henry, 400 Locus Ave., Washington, Pa.
Texas, University of, Austin, Tex.
Thurber, Charles H., 29 Beacon St., Boston, Mass.
Tufts College Library, Boston, Mass.
Tuttle, A. H., Ohio State University, Columbus, O.
Tooke, Charles W., 12 Syracuse Bank Bldg., Syracuse, N. Y.

Ufford, W. S., 301 N. Charles St., Baltimore, Md.

Vilas, Charles A., Wells Bldg., Milwaukee, Wis.
Vincent, George E., University of Chicago, Ill.
Vincent, John Martin, Johns Hopkins University, Baltimore, Md.

Walling, W. E., University Settlement, 184 Eldridge St., New York City.
Walsh, Thomas F., Colorado Bldg., Washington, D. C.
Wang, Chung Hin, 125 Howe St., New Haven, Conn.
Washburn, R. M., 314 Main St., Worcester, Mass.
Weber, A. F., N. Y. State Dept. of Labor, Albany, N. Y.
Weinzirl, John, University of New Mexico, Albuquerque, N. Mex.
West, Max, Dept. Commerce and Labor, Washington, D. C.
White, J. LeRoy, 2400 W. North Ave., Baltimore, Md.
Whitney, Edward B., 49 Wall St., New York City.
Whitten, R. H., State Library, Albany, N. Y.
Wigmore, J. H., Law School, Northwestern University, Chicago, Ill.
Willcox, David, Delaware & Hudson Co., New York City.
Willoughby, William F., San Juan, Porto Rico.

Willoughby, W. W., Johns Hopkins University, Baltimore, Md.
Wilmington Institute Free Library, Wilmington, Del.
Wilson, George Grafton, Brown University, Providence, R. I.
Wilson, Woodrow, Princeton University, Princeton, N. J.
Winthrop, Beckmon, San Juan, Porto Rico.
Wisconsin, Library of University of, Madison, Wis.
Wood, Stuart, 400 Chestnut St., Philadelphia, Pa.
Woodburn, James Albert, Indiana State University, Bloomington, Ind.
Woodruff, Clinton Rogers, 707 North American Bldg., Philadelphia, Pa.
Woolsey, Theodore S., Yale University, New Haven, Conn.
Woolworth, James Mills, First National Bank Bldg., Omaha, Neb.
Worcester Library, Worcester, Mass.
Wright, Carroll D., Clark University, Worcester, Mass.

Yale University Library, New Haven, Conn.
Young, Allyn A., Adelbert College, Cleveland, O.
Young, James T., University of Pennsylvania, Philadelphia, Pa.

Report of the Treasurer for the Year 1905

Receipts.

Fees, life membership (3)	$150.00
Annual dues	687.00
Proceedings, Vol. I sold	16.00
Total receipts to December 29, 1905	$853.00
Balance on hand December 30, 1904	765.90
Total	$1,618.90

Expenditures.

Printing, etc., Chicago meeting	$3.50
Stationery	6.50
Stenographic report of "Discussions"	7.00
Clerk's hire	15.00
Printing and sending Proceedings, Vol. I	342.05
Membership Committee's expenses	231.37
Reprints	10.62
Expressage and postage	29.34
	$645.38
Balance on hand December 30, 1905	973.52
	$1,618.90

Submitted December 30, 1905.

W. W. Willoughby.

Audited and found correct.

L. S. Rowe,

J. A. Fairlie.

REPORT OF THE PROCEEDINGS

OF THE

SECOND ANNUAL MEETING

OF

The American Political Science Association

BY THE SECRETARY.

The second annual meeting of the Association was held in Baltimore, Md., December 26 to 29, 1905, under the auspices of the Johns Hopkins University. The growth and prosperity of the Association was evidenced by the number of members attending the meeting, by the character of the papers read, and by the discussions had thereupon.

The opening sessions of the Political Science and of the Historical Associations were held jointly on Tuesday evening, December 26, and were devoted to the address of welcome by President Remsen of Johns Hopkins University and the presidential addresses of Professor McMaster of the Historical Association and Professor Goodnow of the Political Science Association. President Goodnow took as his subject "The Growth of Administrative Discretion in the United States." After calling attention to the fact that a marked characteristic of English and American governmental polity, as compared with that of Continental systems, is the subjection of administrative officials to the control of the judiciary, Professor Goodnow dwelt upon the marked tendency of our courts in recent years to recognize the constitutionality of legislative acts granting great discretionary powers to those entrusted with the execution of the laws. As a conspicuous instance, he cited the decision of the Supreme Court of the United States upholding

the validity of the Act of Congress which renders final the determinations of administrative officials with regard to the circumstances justifying the deportation of persons of Chinese descent, even though such persons claim to be native-born American citizens. This tendency to increase administrative powers the speaker showed to be caused and justified by the necessity for greater administrative efficiency, if the governmental tasks of our present complex social and industrial life are to be satisfactorily performed. It is, therefore, a development which is not to be deprecated, even though it be away from the political ideas of the fathers of the Constitution. But, together with this increase of administrative powers which he thus approved, Professor Goodnow was careful to point out the correspondingly greater necessity of keeping purely adminstrative and technical matters beyond the control of partisan politics.

The second session, that of Wednesday morning, was largely devoted to a discussion of "Suffrage Conditions in the South;" Prof. Albert Bushnell Hart, of Harvard University, considering the question from the historical and political points of view, and Mr. John C. Rose, United States District Attorney of Baltimore, examining it in its constitutional aspects. Mr. Rose emphasized especially the fact that the Southern States have been able so successfully to disfranchise their adult male negroes, the Fifteenth Amendment to the contrary notwithstanding, not so much because of the limited powers of the general Government, as because Congress has not seen fit to exercise the constitutional powers which it has. Yet doubt was expressed whether, should those powers be exercised to their fullest extent, the negroes would profit by it. Certain formal legal rights would thus be secured to them, but only at the cost of increased racial animosities and social and economic discrimination against them. The reading of the papers was followed by a vigorous discussion of the topic, Mr. H. E. Shepherd presenting the Southern point of view with especial vehemence. Mr. J. T. Stephenson, of Pendleton, N. C., admirably supplemented the principal papers by an account of racial distinctions in general as found in South-

ern statute law since the Civil War. The morning session was concluded by a paper from Mr. George L. Fox, of the University School, New Haven, on the subject of "Corrupt-Practices-at-Elections Acts since 1890 in the United States." Mr. Fox has for some years taken a very active part in the movement for purifying politics in his own state, and drafted the bill which was recently before the Connecticut Legislature. The conclusion which he drew from his personal experience and from his study of the experiences of other states, was that while such corrupt-practices acts as had been passed had in large measure remained dead-letter laws, there was no insuperable or even very serious difficulty in enforcing them when well drawn and supported by a strong public opinion.

The afternoon session of Wednesday was devoted to International Law and Diplomacy, the papers in the main centering around the recent great international drama in the East. Professor Latané, of Washington and Lee University, read a paper on "The Use of Neutral Waters by Belligerents," in which he showed the great divergence between the strict views upon this matter held by England and the United States, and the very lax ones held and practised by France. Prof. Amos S. Hershey, of the University of Indiana, in an interesting paper, dwelt upon the extent to which recent events, especially those of the Far East, have resulted in still further increasing that friendship between England and the United States which England's attitude during the Spanish-American war so greatly stimulated. The concluding paper at this session was by Judge Simeon E. Baldwin, who compared the results of the Montevideo Congress of the seven South American Powers in 1888 with those of the Hague Conferences of most of the European nations in 1893, 1894, 1900, and 1904. The Montevideo Congress attempted a complete codification and dealt with universal rules, and its conclusions have been ratified by but a few Powers. The Hague Conferences more wisely confined their attention to a few subjects, such as marriage, guardianship, etc., and their conclusions upon them have been ratified by most of the European States. Mr. Arthur K. Kuhn, of the New York bar, in discussing Judge

Baldwin's paper, adverted to the extent to which American citizens are often hampered by local rules against aliens in litigating in European countries, and urged that, to correct this evil, as well as for other reasons, the United States should no longer keep aloof from the efforts that European nations are making to harmonize, upon particular points at least, their respective systems of civil jurisprudence.

The meeting of Thursday morning was a joint session with the American Economic Association, the subject for discussion being "The Municipal Ownership of Public Utilities." The principal papers were read by Mr. F. C. Howe, of Cleveland, O., and Prof. W. M. Daniels, of Princeton University. Mr. Howe emphasized the advantages to be obtained from municipal ownership. The real question he declared to be not a commercial one, but one of democratic government, inasmuch as it is the corrupting influence of private franchises that is responsible for most of the corruption in our city politics. Professor Daniels, on the other hand, doubted whether the economy of municipal ownership has as yet been sufficiently demonstrated; and, as regards the purification of politics, was inclined to lay greater stress upon a better organization of city governments.

"The cure for our economic ills," he said, "is to be found primarily in a political readjustment of the framework of city government. As I view the matter, there is no escape under a representative government from reposing responsibility in some person or persons. Let political responsibility be undivided, and let it be located so clearly that concealment is impossible; let the task of cashiering the dishonest or the incapable administrator or legislator be stripped of all indirection or subterfuge, and reduced to the greatest simplicity possible by a radical cut in the number of elected officials—and the choice between municipalization or a franchise policy becomes the comparatively simple question of the relative advantages of widening public control or of enlarging governmental administration."

At the session of Thursday afternoon four papers, dealing with different questions of politics, were read. Miss Mary L.

Hinsdale, of Radcliffe College, considered the history of the efforts that from time to time have been made to obtain admission of the heads of executive departments to the floor of Congress. Mr. Theodore Marburg, of Baltimore, presented a philosophical discussion of the principles of State interference. Whereas, in former years, liberty meant freedom of the individual from restraint by the State, it now often means State interference to protect the individual against oppression by others. Mr. Henry Jones Ford, of Baltimore, in a vigorous paper, criticised those political scientists who, like Professor Burgess, would limit the scope of their inquiries to the analysis of the developed States of Europe and North America, thus excluding from study the very States—China, Russia, and Turkey—whose activities are at the present day the centers of disturbance in world politics. The last paper of the meeting was read by Mr. A. Maurice Low, who took for his topic "The Usurped Powers of the Senate." The usurpations upon which he particularly dwelt were the control that the upper house of Congress has gained in the matter of dictating Presidential appointments, or amending treaties, and even of participating in their negotiation, and of the control of both revenue and appropriation bills.

Thursday evening was devoted to informal meetings of two of the various "Sections" which have been organized within the Political Science Association. The business meeting of the Association and the election of officers took place on Friday morning. The chief matter of business discussed was the future policy of the Association in the matter of publications. A strong sentiment in favor of the issuance by the Association of a quarterly journal was manifested, and a committee was appointed to consider the feasibility of the project, and thereupon to take the steps necessary for its realization. Dr. Albert Shaw, of New York City, was elected President of the Association, Prof. Albert Bushnell Hart, Mr. F. N. Judson, and Prof. H. A. Garfield, Vice-Presidents, and Prof. W. W. Willoughby, of Johns Hopkins University, Secretary and Treasurer.

The following members of the Executive Council were

elected: Professor J. H. Latané, of Washington and Lee University; Professor F. J. Goodnow, of Columbia University; Professor B. F. Shambaugh, of the University of Iowa. Professor C. H. Huberich, of the University of Texas; Professor Jesse Macy, of Iowa College, and Professor Bernard Moses, of the University of California, retired from the Council, their terms of office having expired.

The invitation of Brown University to hold the next annual meeting at Providence, Rhode Island, was accepted.

MEETING OF THE COUNCIL, DECEMBER 29, 1905.

Dr. Albert Shaw, Professor B. F. Shambaugh and Professor W. W. Willoughby were appointed a committee to consider the feasibility of establishing a quarterly magazine to be published by the Association and sent to its members.

Professor F. J. Goodnow was requested to confer with representatives of the American Economic Association and of the American Historical Association with reference to a possible federation of the three Associations.

Dr. Albert Shaw was authorized to confer with representatives of the American Economic Association and of the American Historical Association regarding the time and place of meeting for the annual meeting of the Association in 1907.

One hundred dollars was voted to meet the clerical expenses of the Secretary and Treasurer for the year 1906.

Professors F. J. Goodnow and W. W. Willoughby were continued as a committee to prepare the program for the annual meeting in December, 1906.

PROGRAMME OF THE SECOND ANNUAL MEETING

HELD IN

BALTIMORE, MD., DECEMBER 26-29, 1905

FIRST SESSION.

TUESDAY, DECEMBER 26, 8 P. M., McCOY HALL.

Joint Meeting with the American Historical Association.

Address of Welcome—President Ira Remsen, of the Johns Hopkins University.

Presidential Address—Professor Frank J. Goodnow, President of the American Political Science Association.

Presidential Address—Professor John B. McMaster, President of the American Historical Association.

SECOND SESSION.

WEDNESDAY, DECEMBER 27, 10.30 A. M.

Suffrage Conditions in the South.

The Political Point of View—Professor A. B. Hart, Harvard University.

The Constitutional Point of View—Mr. John C. Rose, United States District Attorney, Baltimore, Md.

Racial Distinctions in Southern Law—Mr. Gilbert T. Stephenson, Pendleton, N. C.

Discussion.

American Corrupt-Practices Acts Since 1890—Mr. G. L. Fox, New Haven, Conn.

THIRD SESSION.

WEDNESDAY, DECEMBER 27, 3.00 P. M.

International Law.

The Use of Neutral Waters by Belligerants—Professor John H. Latané, Washington and Lee University.

The Relations of England and the United States in the East—Professor A. S. Hershey, University of Indiana.

Codifications of Private International Law—Hon. Simeon E. Baldwin, New Haven, Conn.

Fourth Session.

Thursday, December 28, 10.30 A. M.

Joint Session with the American Economic Association.

MUNICIPAL OWNERSHIP.

The Case for Municipal Ownership—Dr. F. C. Howe, Cleveland, Ohio. Discussed by Professor J. A. Fairlie, University of Michigan, and Professor T. K. Urdahl, Colorado College.

The Disadvantages of Municipal Ownership—Professor W. R. Daniels, Princeton University. Discussed by Professor L. S. Rowe, University of Pennsylvania, and Dr. M. R. Maltbie, New York City.

Fifth Session.

Thursday, December 28, 3.00 P. M.

POLITICS.

The Cabinet and Congress—Miss Mary A. Hinsdale, Radcliffe College.

State Interference—Mr. Theodore Marburg, Baltimore, Md.

The Scope of Political Science—Mr. Henry Jones Ford, Baltimore, Md

The Usurped Powers of the United States Senate—Mr. A. Maurice Low, Washington, D. C.

Sixth Session.

Thursday, December 28, 8.00 P. M.

ROUND TABLE MEETINGS OF SECTIONS.

Instruction in Political Science. Opened by Professor W. A. Schaper, University of Michigan.

Comparative Legislation. Opened by Professor J. W. Jenks, Cornell University.

Seventh Session.

Friday, December 29, 10.30 A. M.

BUSINESS MEETING.

Report of the Secretary.

Report of the Treasurer.

Report of the Publication Committee.

Report of the Membership Committee.

PAPERS AND DISCUSSIONS

THE GROWTH OF EXECUTIVE DISCRETION.

PROFESSOR FRANK J. GOODNOW,
COLUMBIA UNIVERSITY.

PRESIDENTIAL ADDRESS.

The most notable point of difference between the English and continental administrative systems at the end of the eighteenth century was probably the relation which they bore to the judiciary. The English administrative system was characterized by its subjection to the control of the courts. The continental administrative system, as seen particularly in that of France, was marked by its freedom from judicial control.

The retention by each system of its characteristic feature may have been due to the conscious desire to secure judicial control or administrative independence, as the case might be. And yet the origin of the difference between the two systems is hardly to be attributed to any well-defined theory of government, but rather to a course of political development of which the leaders of political thought were in all probability not fully conscious. Thus, in England, the jurisdiction of the courts, to whose exercise the judicial control was due, was developed at a time when no clear distinction was made between judicial and administrative authorities, when the royal courts occupied toward the chief of administration, the crown, a position similar to that of all other governmental authorities, when the judges were like other officers subject to the disciplinary power of the crown, which might remove them from office at any time and bring pressure to bear upon them to secure decisions favorable to the royal interests. The development of a wide jurisdiction in the courts, under such

circumstances, did not involve a subjection of administrative action to a control exercised by bodies independent of the administration. For the crown could prevent the rendering of decisions unfavorable to its interests. The crown did not, therefore, try to limit the jurisdiction of the royal courts, but permitted them to exercise such powers as ultimately made them the highest and last instance of control over almost all governmental action.

Conditions on the continent were, however, quite the reverse of those which have been described. In France, thus, during the seventeenth century, administration was separated from justice more fully than was the case in England, and the *parlements*, as the most important judicial bodies were called, were composed of judges who occupied their posts for life, and were irremovable by the crown, because of the fact that the position of judge was bought and sold in very much the same way as military offices were bought and sold at a later date in England. In Germany also the most important courts were independent of the administrative authority. For the judges of these courts were appointed by the estates, while the most important administrative powers were exercised by the princes of the various states into which the Empire ultimately was divided.

Under these conditions the chief of administration, *i. e.*, the crown in France, and the prince in Germany, could not with due regard to his interests permit the development of a wide judicial control over administrative action, and we find in both France and Germany attempt after attempt on the part of the crown and prince to exempt certain administrative matters from the control of the courts. The ultimate result was the development of special tribunals on the continent for the decision of administrative cases, which tribunals were largely subject to the chief executive.

These facts account for the wide jurisdiction of the courts of England and the development of a narrow jurisdiction in administrative matters on the continent. Different as the development is on its surface, and important as the difference is in its effects upon the legal system and the political institu-

tions, nevertheless the main reason why the English courts exercised a control over administrative matters is to be found in the fact that the English courts formed a part of the administrative system of England, and as such were subject to the disciplinary power of the chief of administration, while the main reason why the continental courts did not exercise a control over administrative matters is to be found in the fact that they were not parts of the administrative system and were independent of the chief of administration.

In England, however, the Act of Settlement, enacted by Parliament in 1701, ushered in a new period in the history of judicial control over administrative action. This famous act, it will be remembered, provided that the judges of the royal courts should not be removed by the crown except upon the address of both houses of Parliament, thus giving to these officers a tenure not possessed by any other officers in the English system of government. The Act of Settlement had the further result of changing the character of the most important method of control over administrative action. This control, although theretofore exercised by bodies called courts, was really a control of an administrative character, because the bodies which exercised it were subject to the disciplinary power of the highest authority in the administration. It became, however, with the Act of Settlement, a judicial control, because it was exercised now by bodies which were hardly at all subject to an administrative disciplinary power.

Notwithstanding this change in the character of the control over administrative action, its extent was hardly lessened at all in the subsequent years. The jurisdiction of the courts was so well established that they continued to exercise it in the future as they had exercised it in the past. The reason why this was the case is probably to be found in the fact that the people had great confidence in the courts. As Professor Lowell says:

"'The gladsome light of jurisprudence,' as Coke called it, came with the king's courts, and hence it is not surprising that they supplanted the baronial courts, and in time drew before themselves all important lawsuits. . . . The same body of

judges, therefore, expounded the law in all parts of the realm, and hence England, alone among the countries of Europe, developed a uniform natural justice called the common law. The people naturally became attached to this law and boasted of the rights of Englishmen, while the courts that were the creators and guardians of the law became strong and respected."

In this way, then, England secured a judicial control over administrative action while the continent secured administrative independence. As a result of this independence the continent developed, particularly after the time of Napoleon, a much more efficient administrative system than England could develop under her régime of judicial control, and the study of administration and administrative methods assumed a place on the continent which it never reached in England, notwithstanding the subsequent development of administrative questions.

The English system of judicial control, *i. e.*, a control exercised by bodies independent of the executive, and from the point of view of its extent a wide one, became ours by inheritance along with other English institutions. For quite a time in our history it was developed rather than limited, being extended over legislative action through the power, which our courts soon began to exercise, of declaring acts of the legislature unconstitutional. At first no objections to its maintenance or extension over administrative action were made, for the reason that the period immediately subsequent to the formation of our constitutions was one which was characterized by great emphasis upon individual liberty. It was the age when the theory of the social compact and that of the natural rights of man had great influence on our law. Social conditions in this country at the time were comparatively simple. Much was expected from, and much was secured by, individual effort largely uncontrolled by law. Our growth was so rapid, industrial conditions became so complex, and social distinctions so marked, however, that by the latter part of the nineteenth century a change is to be noted in our attitude toward this question of judicial control.

It is to the change which has been introduced into our governmental system as a result of the attempt to substitute administrative independence for judicial control that I wish to call your attention this evening. My treatment of the subject will of necessity be somewhat legal in character. For here, as in so many other political problems, an investigation of the legal conditions is absolutely necessary to an adequate consideration and a successful solution of the question under treatment.

The most complex and difficult part of our governmental problem is that which is assigned to our national government. The management of our relations to other states, and of the national finances, the proper regulation of our commerce, the operation of such a vast commercial undertaking as our post-office, are all matters of such importance, magnitude and complexity as to call for the highest administrative skill and efficiency. In so far as those who are attending to these matters are subjected to the control of the courts, just in so far are they hampered in the discharge of their important duties, just so far is the administration of the departments under their charge made difficult and their action made slow.

For these reasons, perhaps, there has been a tendency on the part of Congress, from almost the beginning of our history, not to adopt in its complete form, as seen in England, the principle of judicial control over administrative action. This tendency is seen in the jurisdiction originally given to the federal courts. These bodies were not given as wide a jurisdiction as was given to the higher state courts. Thus it was provided that neither the Supreme Court of the United States nor the circuit or district courts should have original jurisdiction to issue such writs as *mandamus* and *certiorari* to compel or review action on the part of the officers of the United States government.[1] As jurisdiction in *mandamus* and *certiorari* is one of the most important means

[1] The United States Court of the District of Columbia has this jurisdiction, as the successor of the English Court of King's Bench through the Supreme Court of Maryland. But the territorial extent of its jurisdiction is confined to the District of Columbia.

by which the state courts exercise a control over state officers by forcing them to perform their duties and by reviewing their determinations, and as state courts may not issue these writs to federal officers, it will at once be seen what a position of administrative independence and freedom from judicial control has been accorded to federal officers as compared with the officers of the state government or with English officers.

Perhaps this omission from the judiciary act of 1789 of this jurisdiction was an accident. But whether that be the case or not, it is none the less true that Congress has never shown any disposition to remedy the omission, although the Supreme Court has several times called attention to the fact that neither it nor any of the circuit courts has this jurisdiction.

For quite a time Congress took no further action towards relieving the administration from judicial control. Its failure to act was probably due to the fact that no such further action was needed. No such action was needed because the functions of the national administration were not nearly so important as they are now. But, beginning with the Civil War, the national administration began to increase greatly in importance. This importance is seen particularly in the matter of the finances. The financial administration almost overshadowed the other administrative branches of the national government because of the enormous, both current and permanent, expenses which the war entailed.

The carrying on of the great governmental undertakings then under way made it necessary that the receipts be secured with a promptness and certainty which were impossible under a régime of extended judicial control. The result was an attempt in some instances to cut off all judicial remedies whatever, in others to make resort to them by the taxpayer more difficult. In their place, or as a necessary prerequisite to a resort to them, was provided an administrative remedy.

While this movement was particularly characteristic of the Civil War period, it would not be correct to say that there are no evidences of it prior thereto. Thus, in 1839, the action of Congress, as interpreted by the Supreme Court,[2] cut off the

[2] *Cary* v. *Curtis*, 3 How., 236.

most important judicial remedy in customs cases and substituted therefor an appeal from the decision of the collector of the customs to the Secretary of the Treasury. Later, it is true, Congress expressly restored the old judicial remedy, but it made resort to the administrative remedy of appeal to the Secretary of the Treasury and an adverse decision on that appeal, necessary prerequisites to resort to the judicial remedy. During the war similar remedies were provided for the extensive system of internal revenue taxation which was then developed. Since the time when this limitation of the judicial control was provided there has never been a time that the old system has been restored. In customs cases the Administrative Act of 1890 further limited the judicial remedy, providing for customs cases special tribunals similar to the tribunals provided in France and Germany in the seventeenth and eighteenth centuries for the trial of administrative cases. These are the boards of general appraisers, whose members may be removed at any time by the President,[3] whose decisions are made without a jury, are final in matters of appraisement, but may be reviewed by the courts when they relate to classification.

While the Judiciary Act of 1789 did not give the federal courts jurisdiction in *mandamus* and *certiorari*, it still permitted them to issue the injunction, a most potent means of judicial control over administrative action.[4] But when Congress came to organize the new system of taxation made necessary by the war, it came to the conclusion that it was unsafe to subject the action of the revenue officers of the government to the control of the courts through the issue of the injunction, and therefore expressly forbade the courts to issue any injunction to restrain revenue officers from collecting the revenue.[5]

[3] *Shurtleff* v. *United States*, 189 U. S., 311.

[4] *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S., 94.

[5] The Supreme Court has interpreted this statute as preventing the courts from issuing the injunction in tax cases to government officers (*Snyder* v. *Marks*, 109 U. S., 189), but has, nevertheless, permitted the courts to issue it to private parties although the issue of the writ actually has the effect of preventing the collection of taxes. This was done, for example, in the in-

The result of this development has been to relieve officers of the national government, in the exercise of one of the powers most restrictive of private right, from the judicial control which, under the old English system, was exercised over them. For the remedies open to the individual are sometimes so difficult of application that he will pay the tax rather than go to the expense and trouble of contesting it. Thus, for example, in the case of certain stamp taxes, such as the tax imposed recently on deeds and mortgages, almost the only way one could secure an appeal to the courts was to refuse to affix the stamp required by law and run the risk of a criminal prosecution. Certainly the Supreme Court has held that the purchase of the stamp, its affixing to the document, even if accompanied by a protest to the collector, is a voluntary payment and that the judicial remedy is not available in the case of taxes voluntarily paid.[6]

The curtailment of the former judicial control over administrative officers is noticeable also in cases other than those already mentioned. The recent cases decided in the Supreme Court relative to the power of administrative officers of the national government to make conclusive determinations which are not susceptible of review by the courts are examples of this tendency to relieve administrative officers from judicial control.

Thus, it has recently been held that Congress may constitutionally vest—and as a matter of fact has actually vested—in administrative officers the conclusive determination of the existence of the facts which justify the deportation of an alien,[7] and that in the case of persons of Chinese parentage, the power of determining finally that such persons are not native-born American citizens may be constitutionally, and as a mat-

come tax cases. *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S., 429. Congress has also enacted legislation which takes from the individual the right to bring actions for tort or in replevin against the tax officers of the federal officers because of their performance of their duties. See the opinion in *De Lima* v. *Bidwell*, 182 U. S., 1.

[6] *Chesebrough* v. *United States*, 192 U. S., 253.

[7] *Ekiu* v. *United States*, 142 U. S., 651.

ter of law is actually, vested in the administrative officers of the government, although such persons of Chinese descent are, as a result of such determination, prevented from coming to this country, which they claim to be the land of their birth.[8]

Again, it has been held that the determination by an administrative officer that property shall be destroyed because imported into the United States contrary to the provisions of a statute and treasury regulations passed in pursuance thereof, need not by the constitution, and may not under the statute of Congress, be reviewed by the courts.[9]

The Supreme Court has even gone so far as to hold that, although the person owning such property has not been accorded a hearing before the determination was reached which held that the property was imported contrary to law, and although the order decreeing the destruction of the property has been made without the intervention of a judicial body, the person owning such property has not been deprived of his property without due process of law.

Finally, the Supreme Court has held that the determination that the facts exist which under the statute justify the exclusion of certain articles from the mails, cannot under the law be reviewed by the United States courts,[10] and has intimated that determinations of this character which involve mixed questions of law and fact are, when made by the administrative authority having jurisdiction by statute, conclusive and not subject to judicial review.[11]

Time does not permit of the attempt to set forth the reasoning by which the Supreme Court endeavors to justify these decisions. Nor indeed is the attempt to set forth this reasoning necessary. For what concerns us on this occasion is merely the fact that these decisions have been made. For this fact is indicative of the tendency to which it is the purpose of this paper to call attention.

[8] *United States* v. *Ju Toy*, 198 U. S., 253.

[9] *Buttfield* v. *Stranahan*, 192 U. S., 470.

[10] *Bates & Guild Co.* v. *Payne*, 99 U. S., 106.

[11] *Public Clearing House* v. *Coyne*, 194 U. S., 497.

Before leaving this point, perhaps mention should be made of the power which administrative officers have to enforce their determinations. Two methods are distinguishable. The one is by judicial process; the other is by summary administrative proceedings. So far as enforcement by judicial process is the rule, the method of enforcement in and of itself provides for a judicial control, since administrative officers have to apply to the courts to enforce their orders, and the courts may on such application refuse to act on the ground that the orders are illegal. So far as enforcement by summary administrative proceedings is the proper method, in order that there may be judicial control provision must be made for it in some other way, as by *certiorari*, injunction, or by an action for damages against the officer taking action.

At a very early time in our history it was decided that summary administrative proceedings for the enforcement of debts due the government from its officers were constitutional.[12] Later similar proceedings were upheld for the collection of taxes even where such collection resulted in the sale of the real property of the tax-payer,[13] and at the present time the statutes of Congress confer large powers on collectors of the revenue to collect the taxes due the United States by this method.

When we take these summary methods into consideration and remember that almost all the ordinary remedies by which the courts, on the application of the taxpayer, may exercise their control over actions of revenue officers, have been rendered less effective, if not taken away altogether, we see what an independent position has been accorded by the law to the officers of the United States government who are engaged in the collection of the revenue, and that the tendency is to put the other officers of the government into a similar position of independence.

[12] *Murray's Lessee* v. *Hoboken Land and Improvement Company*, 18 Howard, 272.

[13] *McMillen* v. *Anderson*, 95 U. S., 37; *Springer* v. *United States*, 102 U. S., 586.

What is true of the United States administrative officers is apparent in the case of the officers of the state governments. Attention has already been called to the fact that at the end of the eighteenth and the beginning of the nineteenth century great emphasis was laid on bills of rights, as they were called, which were expected to curtail the power of all branches of the government in their dealing with what were considered to be the natural rights of man. The effectiveness of these bills of rights was, however, in large measure, dependent upon the courts, which came to be regarded as having the power to declare unconstitutional all government acts, even those of the legislature, which they regarded as infringing the rights of the individual as guaranteed by the constitution. For quite a time in our history the courts were inclined to make large use of the powers with which they considered themselves to be endowed, but within the last generation they have developed the idea that there exists in the legislature a power not in any way limited by the constitutional provisions protecting private rights. This power is called the police power. It may be exercised by the legislature and by administrative officers in their attempts to enforce statutes of the legislature without making any compensation to the individual for the expense to which he may be put by their orders. The extent to which the sphere of individual rights has been subjected to government regulation and relieved from judicial protection is of course dependent upon the view taken by the courts as to the content of the police power. This is, however, a subject whose extent and intricacy make it impossible to attempt to go into it on such an occasion as this. It may, however, safely be said that its extent is recognized by the courts to be far greater than they at one time considered it to be. Thus the decisions of the New York Court of Appeals have upheld the right of the legislature to give to administrative officers the power to force owners of tenement property, which, at the time of the passage of the law giving the power, complied in all respects with the law, to make improvements in their property by the introduction of new kinds of plumbing, even where the introduction of such plumbing results in the expenditure of a substan-

tial sum of money.[14] The right to liberty is no more protected from the operation of the police power than is the right to property. Thus, the Supreme Court of the United States has just held that the right to liberty guaranteed by the Constitution is not violated by the provision of compulsory vaccination.[15]

The subject of the control of the state courts over the administrative officers of the state government, so far as it is affected by the question of remedies, is a very large one. Its history necessarily involves a history of judicial procedure. The conditions, furthermore, are so different in different states that it is doubtful if any general conclusions of value can be derived from a study of remedies. It may, however, be said that, in the most complex conditions which are to be found, such as those existing in the cities, a tendency is observable similar in character to the tendency in the legislation of the United States national government, already noticed, towards according greater freedom to administrative action, notwithstanding the greater extent of that action which is necessitated by the presence of the problems incident to municipal life.

In spite of the constitutional provisions protecting property, we find the courts upholding in their decisions more and more arbitrary action on the part of administrative officers having to do with the public health and safety of the community. Thus, the courts of New York have in recent years upheld, in almost all instances, the constitutionality of legislation conferring upon administrative officers powers relative to tenement-houses and the public health generally. Health officers in almost all the states are permitted to proceed to the making and enforcement of nuisance-removal ordinances, as they are called, without notice and an opportunity to be heard on the part of the persons affected by them. The old idea that a jury trial is necessary to the determination that a nuisance exists

[14] *Department of Health* v. *Trinity Church*, 145 N. Y., 32.

[15] *Jacobson* v. *Massachusetts*, 197 U. S., 11. See also *In re Veemeister*, 179 N. Y., 239; *State* v. *Jacobson*, 183 Mass., 242; *State* v. *Hay*, 126 N. C., 999.

has been almost completely abandoned. Action of health officers in taking children believed to be affected with a contagious disease from their parents' arms, after the door of the house in which they lived had been broken in, and consigning them into a pest-house has been sustained as legal.[16] Health officers have been recognized as possessing the power to force, either certain classes of the population, or the entire population of certain districts, to submit to vaccination, where in their opinion there is danger from smallpox.[17]

There is a tendency, further, towards upholding as constitutional the finality of administrative determinations made after a hearing. Such a tendency is perfectly clear where the determination reached involves merely questions of fact, as *e. g.*, the assessment of property for taxation, and is noticeable even in cases where the questions involved are questions of mixed law and fact, as, for example, the determination as to whether given conditions constitute a nuisance. The only exception to such a tendency is either the provision of a new remedy or the remodeling of an old remedy so as to permit of a direct appeal to the courts against administrative determinations, while recognizing their finality in collateral judicial proceedings.[18]

Notwithstanding this exception to the general tendency, it is still true, however, that both in the national government and in the state governments, but particularly in the former and those portions of the latter having to do with municipal life, the powers of administrative officers are, on the whole, broader and much less subject in their exercise to judicial control than they formerly were.

[16] *Haverty* v. *Bass*, 66 Me., 71.

[17] *Morris* v. *Columbus*, 102 Ga., 792; *Abeel* v. *Clark*, 84 Cal., 226; *Duffield* v. *School District*, 162 Pa. St., 476.

[18] This exception is quite marked in the tax cases where a direct remedy against assessments is very commonly provided. Furthermore, in some cases the province of the writ of certiorari, the most important common law remedy for the review of administrative determinations, has been sometimes so extended by legislation as to offer to the individual affected by an administrative determination the right to a judicial review of it even as to questions of fact.

So great, indeed, has been the change in this respect that some people are inclined to believe that we of the present day are departing from the faith of our fathers, and deplore a change which, if continued, will be apt to place us on a par with the people of continental Europe, who, many of us are accustomed to believe, do not enjoy the same sphere of individual freedom with which we consider that we are blessed.

What now is the explanation of this change in one of the important principles of Anglo-American legal philosophy? Why do we tend towards greater administrative power and greater freedom of administrative officers from judicial control?

Is not the reason to be found in the fact that the original English idea of judicial control over administrative action was worked out at a time when industrial and other social conditions were comparatively simple? and that such a system of control was in reality suitable only to such conditions? The greater administrative freedom to be found on the continent during the same period may well have been due to the more complex industrial and social conditions which we are told existed there.[19] At the time the judicial control was developed in England that country was many years behind the continent in industrial development.

Our conditions were naturally less well developed than were even those of England at the time we adopted the idea of judicial control of administrative action, and the change in them, which is evident to any one who examines them, has brought it about that we have enlarged the sphere of administrative action and curtailed the judicial control of that action, although in so doing we have seriously curtailed the sphere of individual freedom. It may, perhaps, be the case that the curtailment has been greater than is either desirable or necessary. However that may be, it is certainly true that large judicial control over administrative action is incompatible with administrative efficiency, and the days in which we live, the days of

[19] Cunningham: Growth of English Industry and Commerce (1892), vol. ii. p. 347.

the factory and the mine, the railroad and the great industrial corporation, the tenement-house and the slum, make greater social control over individual action an absolute necessity. Effective social control is possible only where the administration is efficient. That being the case, it is inevitable that judicial control over the administration must be curtailed.

While, therefore, in some exceptional instances judicial control over administrative action may be restored, while in certain more exceptional instances it may be extended, it can hardly be doubted that the future will see that control on the whole diminish rather than increase, notwithstanding that the action of administration officers may be more extensive than ever before in the history of Anglo-American institutions. We have passed through an age of constitutional private rights and are approaching one of social control. What needs emphasis is no longer the inherent natural rights of the individual, but the importance, indeed the necessity, of administrative efficiency. For upon administrative efficiency depends the effectiveness of that social control without which healthy development in existing conditions is impossible.

But while one of the main means by which such efficiency may be secured is the grant to administrative officers of greater freedom of action, it is to be remembered that this is not the only or probably the most important means. We must recognize as well that an efficient administration must be kept out of politics. That we have as a matter of fact recognized the importance of this principle is seen in the success which the movement for reform in the civil service has had. It is seen also in the greater permanence accorded those positions in the government service involving the discharge of duties of a technical and professional character, such as the position of teacher, member of scientific bureau, policeman and fireman.

When we have fully recognized the importance of an efficient and upright administration and have also recognized that an administrative officer is following a profession rather than occupying a "place," the problem of the proper protection of private rights, and the according to the administration the necessary freedom of action will be much nearer solution.

For we shall then have secured an administrative service which will not need to be subjected to judicial control in order to be made regardful of private rights. This service will then have that freedom of action so necessary to its efficient exercise of those powers of social control with which it must be endowed, if we are to hope to secure the highest public welfare in the industrially and socially complex age in which we are living.

THE USE OF NEUTRAL WATERS BY BELLIGERENTS.

BY PROFESSOR JOHN HOLLADAY LATANÉ,

WASHINGTON AND LEE UNIVERSITY.

During the past century great progress has been made in international law along two lines: (1) in the extension of the practice of international arbitration, and (2) in the development of a clearer conception of the rights and duties of neutrals. Both movements tend toward peace, the one in avoiding war by the judicial determination of the matter in dispute, and the other in limiting the area of warlike operations after war has actually been declared and in restricting hostilities to the original parties to the dispute. The Hague Peace Conference of 1899 marked the formal adoption by the nations of the earth of the principle of arbitration of certain classes of disputes, but this conference felt that its work was incomplete so long as there was such wide divergence of opinion as to the rights and duties of neutrals. Before adjournment, therefore, a resolution was passed expressing the hope that this subject might be taken under consideration by a second conference in the near future. In President Roosevelt's proposal for a second conference, issued by Secretary Hay, October 21, 1904, this is one of the three subjects suggested for consideration, and special attention is called to one aspect of it, namely, "the treatment due to refugee belligerent ships in neutral ports." This aspect of the subject derives special importance from the events of the Russo-Japanese War, and it is to this aspect of the subject that this discussion will be directed.

In the development of the law of neutrality the United States has taken the lead, and every American may well feel proud of his country's record in this matter. On this point Mr. W. E. Hall, a leading English authority, says: "The policy of the United States in 1793 constitutes an epoch in the development of the usages of neutrality. There can be no doubt that it was intended and believed to give effect to the obligations then incumbent upon neutrals. But it represented

by far the most advanced existing opinions as to what those obligations were; and in some points it even went further than authoritative international custom has up to the present time advanced. In the main, however, it is identical with the standard of conduct which is now adopted by the community of nations." [1] During the Napoleonic wars we struggled hard to establish the principle that neutrals had rights which belligerents were bound to respect, and we finally went to war with England in defense of this principle. At the close of the Civil War, after long and delicate negotiation, we further established, through the Geneva award, the principle that neutral states have duties which they are bound to fulfill as well as rights to maintain.

The view now accepted is that neutrality is not a continuance of peace merely, but a peculiar status which imposes upon neutrals, whether they are willing or not, positive duties which belligerents have every right to expect them to perform. Some of these duties are well defined, while others are still matters of dispute. The idea that a state may occupy a status of qualified neutrality has been abandoned by practically all writers on international law. There are certain duties in the performance of which no neutral state is allowed any latitude. In regard to the asylum of belligerent ships in neutral waters, with which we are especially concerned in this paper, the following principles may be regarded as well recognized: (1) Neutral states are bound to prevent hostilities in their territorial waters; (2) to prevent the use of their ports and waters as a base; (3) to prevent the increase within their waters of armaments or crews; (4) to prevent the use of their waters for the purpose of watching the ships of the enemy or of obtaining information as to his future movements; (5) not to allow a belligerent ship to leave a port within 24 hours of the departure of a ship of the other belligerent.[2]

Many states go further than these requirements. For instance, the declarations of neutrality issued at the beginning of the Russo-Japanese War, with the single exception of the

[1] Hall's International Law, 5th edition, p. 593.

[2] Hall's Int. Law, 5th ed., p. 629; *cf.* also T. E. Holland in Fortnightly Review for May, 1905.

French, forbade belligerents to bring prizes into their ports except under stress of weather, and the French proclamation forbade their remaining in her ports with prizes more than 24 hours. The point which was most discussed during the recent war was the length of time a belligerent cruiser may remain in a neutral port. On this point the French circular was very indefinite, practically leaving the determination of the matter to the local authorities. It says: "La durée du séjour dans nos ports de belligérants, non accompagnés d'une prise, n'a été limitée par aucune disposition spéciale, mais pour être autorisés à y sejourner, ils sont tenus de se conformer aux conditions ordinaires de la neutralité." [3] The rule that a belligerent ship shall not remain in a neutral port more than 24 hours was first adopted by Great Britain in 1861, and is found in the neutrality proclamations of 1904 issued by Great Britain, the United States, Egypt, China, Denmark, Norway and Sweden, Italy, and the Netherlands.[4] Germany, Austria, and Spain did not lay down any rules in their proclamations, but merely called the attention of their subjects to the existence of war and cautioned them to observe a strict neutrality. It is believed, however, that they would have enforced the 24-hour rule had occasion arisen. In 1898 this rule was adopted by both Russia and Japan. Thus France appears to be the sole exception. While this rule has not hitherto been considered a rule of international law, its enforcement during the recent war by practically all the powers but France gave rise to the impression that the latter power had failed to do her full duty toward Japan. This impression was so strong on the part of the Japanese as to make them seriously doubt the neutral intent of France, and it may be very well questioned whether in future wars any power really wishing to maintain a neutral status will venture to disregard this rule.

The Russo-Japanese War had scarcely begun when an act was committed by Japan in the territorial waters of Korea

[3] La Justice Internationale, Aout-Décembre, 1904, p. 139.

[4] Foreign Relations of the United States, 1904, pp. 14-35; Archives Diplomatiques, 1904, tome 90; Revue Générale de Droit International Public, Mai-Juin, 1904.

which demonstrated at once the complex character of some of the questions of international law involved in this contest. On February 8, 1904, Admiral Uriu entered the harbor of Chemulpo, on the northwest coast of Korea, and began to disembark troops. There were in the harbor at the time four war vessels of neutrals and two Russian war vessels, the gunboat *Korietz* and the cruiser *Varyag*. Earlier in the day the *Korietz* had exchanged shots with the Japanese fleet off Round Island and then returned to Chemulpo. On the morning of the 9th Admiral Uriu notified the Russian commander that unless he came out before 4 p. m. he would be attacked at his anchorage. He further notified the neutral commanders of what he proposed to do and requested them to keep away from the scene of action. Upon the receipt of this information the captains of the English, French, and Italian war vessels lying in the harbor held a conference on board the English cruiser *Talbot*. The commander of the American gunboat *Vicksburg*, which was also anchored in the harbor at the time, was not notified of this conference or invited to be present, probably for the reason that in discussing beforehand with the other neutral commanders the possibility of a Japanese attack, he had expressed the intention of maintaining a strict neutrality, and had stated the opinion that the violation of Korean neutrality would be a matter entirely between Korea and the belligerents involved.[5] As a result of the conference on board the *Talbot* the following joint communication was addressed to Admiral Uriu by the English, French, and Italian commanders:

"We consider that in accordance with the recognized rules of International Law, the port of Chemulpo being a neutral port, no country has the right to attack the vessels of another power lying in that port, and that the power which contravenes those laws is solely responsible for any loss of life or damage to property in such a port. We accordingly protest energetically against such a violation of neutrality, and we shall be happy to learn your decision on the subject."[6]

[5] Foreign Relations of the United States, 1904, p. 783.

[6] Smith and Sibley, International Law as Interpreted during the Russo-Japanese War, p. 114.

This protest was not heeded by the Japanese admiral, who stood by his ultimatum. About mid-day the Russian vessels left the harbor and were attacked by the Japanese squadron. After a fight of an hour's duration they returned in a crippled condition crowded with wounded, and the neutral war-ships, including the American, promptly lent their assistance in removing the Russian sailors from the injured vessels.

This incident raises three distinct questions: (1) Was the act of Admiral Uriu a violation of neutrality? (2) If so, did the neutral commanders have a right to protest? (3) Was the rescue of the Russian crews after the battle permissible? The first question raises the point as to the status of Korea. Was Korea in point of fact neutral territory in this war? The Emperor of Korea, it is true, issued a note to all the powers at least a month before the outbreak of hostilities declaring his determination to preserve the strictest neutrality. This declaration, as a matter of fact, however, seems to have been favorable to Russia. At least it was referred to in terms of praise by Count Lamsdorff. The point might be raised that this declaration had no force, since most publicists agree that a declaration of neutrality can be made only after war has been declared or hostilities begun. Russia denounced the act of Admiral Uriu in unmeasured terms. Japan replied that "Korea having consented to the landing of Japanese troops at Chemulpo, that harbor had already ceased to be a neutral port, at least as between the belligerents." As a matter of fact, Russia and Japan had intrigued for Korea for years without decisive result, and finally they had begun to fight for possession. The neutrality of Korea, like the independence of Korea, was largely a fiction. As Dr. Lawrence says in discussing this question, "A territory can not be neutral when war is being waged in it and for it." [7] Korea was utterly helpless and unable to perform the neutral duties demanded of her, even if she had wished to do so. When all the circumstances are taken into account, Japan can hardly be held for a violation of neutrality in this case.

As to the protest of the English, French, and Italian com-

[7] War and Neutrality in the Far East, p. 282.

manders, the general opinion of publicists does not sustain such action. It will be remembered that the American officer on the spot was not invited to the conference, and refrained from raising any protest, but simply prepared to take his vessel away from the scene of action. His position seems to have been correct. Violation of neutrality is a question between belligerents and the neutral whose territory is violated. Other neutrals have no concern in the matter unless their own interests are involved. In this case it has not been shown that the protesting powers had any interests at stake.

In the rescue of the crews from the injured ships the American sailors took part with the English, French, and Italian. The extent of aid that neutrals may render to belligerents after battle is one of the unsettled questions of international law. In the convention for adapting the principles of the Geneva Convention to maritime warfare drawn up by the Peace Conference of 1899, it is provided that hospital ships "shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents independently of their nationality" (Art. IV). It is also further provided that "Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing" (Art. VI). But no provision was made for rescue by neutral ships of war. The rescue of the shipwrecked, meaning by that term, according to Captain Mahan's definition, "men overboard for any cause during or after naval battles," would seem to be no more than the dictates of humanity demand, but then the question arises as to their future status. Are they to be restored to their own country, handed over to the belligerents, or interned? While the reports of what actually took place in the harbor of Chemulpo are conflicting, still it is evident that more was done in the way of assistance than the rescue of drowning men. The Japanese made no diplomatic protest, but they did demand the surrender of the rescued Russians as prisoners of war. This the neutral commanders were unwilling to do, and, after some negotiation, the Russians were finally handed over to Russian vessels outside the area of hostilities, with the understanding

that they would not be employed again during the war. At the Hague Conference, Captain Mahan called attention to the unsatisfactory character of the rules and practice of nations on these points and suggested some positive enactments, but no agreement could be reached. This is therefore one of the problems confronting the next conference.

On the morning of August 12, 1904, before daylight, an incident occurred in Chefoo harbor which eclipsed the Chemulpo affair in the amount of discussion to which it gave rise. The Russian destroyer *Rycshitelni*, which had escaped from Port Arthur and sought asylum in Chefoo harbor, was captured and towed out by the Japanese. As the Japanese and Russian accounts of this incident are at variance, I will give a résumé of each. The following account is taken from a Japanese official statement:

"On the night of August 10, while cruising in search of the dispersed Russian squadron, our destroyers *Asashiwo* and *Kasumi*, sighted one apparently Russian destroyer steaming in full speed westward, and immediately pursued her, but the latter disappeared in the darkness. Continuing search till next morning, they found that the enemy's destroyer had fled to Chefoo. They remained outside territorial water till night, vainly expecting her coming out. Then they entered Chefoo and found that the enemy's destroyer was the *Rycshitelni*, and that there was no sign of her being dismantled. Accordingly Lieutenant Terashima was sent on board the *Rycshitelni* and offered the Russian commander the alternative either to leave port before dawn or to surrender. The latter accepted neither, and while discussing proceedings ordered his men to destroy machineries and to fire. Then suddenly taking Terashima in his arms he jumped overboard. Another Russian also jumped into the sea with a Japanese interpreter. Then other Russians commenced hostilities. Meanwhile the magazine of the *Ryeshitelni* exploded, causing casualties among our men. Thereupon the *Ryeshitelni* was captured and towed out. Our casualties were 1 killed, 14 wounded." [8]

The commander of the *Ryeshitelni*, Lieutenant Rostachak-

[8] Foreign Relations of the United States, 1904, p. 424.

ovski, reported to his government that he had lowered his flag and dismantled his vessel before the Japanese attack. His account of what then took place is as follows:

"On the night of the 11-12th I was in port, when I was piratically attacked by the Japanese, who had approached with two torpedo boats and a cruiser, and sent a party under the command of an officer as though to enter into pourparlers. Not having arms to resist, I gave orders for preparations to be made to blow up the ship. When the Japanese began to hoist their flag, I insulted the Japanese officer by striking him and throwing him into the water. I then ordered the crew to throw the enemy into the sea. Our resistance, however, was unavailing, and the Japanese took possession of the boat. Explosions occurred in the engine-room and in the forepart of the vessel, but the *Ryeshitelni* did not sink, and was taken from the port by the Japanese." [9]

In this incident the character of Chinese neutrality was involved. The Japanese Government sustained the action of its officers on the following grounds:

"(1) That the neutrality of China, territorially speaking, is incomplete and extends only to those places which are not for the time being occupied by the armed forces of either belligerent.

"(2) That, independently of the question of the effect of the presence of the *Ryeshitelni* in the harbor upon the neutrality of China, Russia had, prior to the capture, violated the neutrality of Chefoo.

"(3) That the *Ryeshitelni* first began the struggle which resulted in her capture." [10]

The second ground, which undertakes to justify the incident as an act of reprisal, cannot well be defended; while the third, in view of the very aggressive conduct of the Japanese, is hardly worthy of notice. But the first ground stated is not without a certain measure of strength, and the Japanese maintained their position with no little ingenuity. They claimed that in the struggle in which they were engaged the status of

[9] Smith and Sibley, *op. cit.*, p. 117.

[10] Foreign Relations of the United States, 1904, p. 425.

China was wholly unique; that nearly all the military operations were carried on within her borders, but that she was not a party to the conflict; nevertheless her territories were in part belligerent and in part neutral; such a condition of things was, as regards international law, an anomaly and a contradiction; but that in the interests of international intercourse and the general tranquility of China, the Japanese Government had engaged to respect the neutrality of China outside the regions actually involved in the war, provided the Russians made a similar engagement and carried it out in good faith. "In other words, the Japanese Government hold China's neutrality imperfect, applicable only to places not occupied by the armed forces of either belligerent, and that the Russians cannot escape the consequences of unsuccessful war by moving their army and navy into those portions of China which were made by the arrangement conditionally neutral." [11] The Japanese statement further declared that with the termination of the Chefoo incident "the neutrality of the port is revived."

The weak point in this argument is that it assumes that the entrance of the Russian vessel into the port of Chefoo seeking asylum amounted to an armed occupation of that port. The facts do not warrant this view. The *Ryeshitelni* had the same right to enter a neutral Chinese port that she had to enter any other neutral port. Under the terms of the Chinese neutrality proclamation she had a right to remain there only 24 hours. At the end of 27 hours Japan went in and cut her out. Even had the 24-hour rule, which China had voluntarily adopted, been universally recognized as a rule of international law, it was neither the right nor the duty of Japan to enforce it. A neutral state must enforce its own neutrality. It cannot suffer one of the belligerents to assume this duty. Japan's theory of conditional neutrality, a neutrality which is extinguished and revived at the will of a belligerent, is without legal basis and fails to justify her act.

The Chefoo incident raises the general question as to the right of asylum in neutral ports. As we have already had occasion to note, England adopted the 24-hour rule in 1861, and the great majority of powers have since adopted it. Rus-

[11] Foreign Relations of the United States, 1904, p. 139.

sia and Japan both adopted it in 1898 at the time of the Spanish-American War. France, on the other hand, has favored a less stringent policy towards belligerents. The reason of this difference is at once apparent. England's colonial possessions encircle the globe. She has naval stations in all parts of the world and does not have to depend upon neutrals for coal or provisions. The enforcement of this rule, therefore, gives her a manifest advantage over a continental power like France whose colonial interests are less extensive. Consequently France has always resolutely resisted the adoption of this rule as a rule of international law. Had she adopted it in the recent war the Baltic squadron would never have undertaken the long voyage to the East. When Russia lent her countenance to this rule in 1898 she could not have foreseen the straits to which she would be reduced in 1904.

Probably no phase of the Russo-Japanese War, as far as the naval side of it was concerned, attracted more attention or raised more perplexing questions than the long voyage of the Baltic squadron to the East. Although reliable information as to all its movements is not now available, the following facts are sufficient to illustrate the use it made of French waters. When the war broke out Admiral Wirenius was at the French port of Jibuti, Somaliland, with a battleship, several cruisers, torpedo-boats, and destroyers, and continued there for at least ten days after the declaration of war. Again, in December, 1904, Admiral Folkersahm, with the cruiser squadron of the Baltic fleet, spent a whole week at Jibuti.[12] The same port was used upon other occasions during the war very much like a base, though just what constitutes a base has never been very clearly defined in international law.

Admiral Rohzdestvensky stayed in the waters of Madagascar from December, 1904, till March, 1905. He then proceeded on his way as far as Kamranh Bay, in French Indo-China, where he remained from April 12th to 29th. He then proceeded up the coast some 50 miles to Hon-Kohe Bay. His entire stay in the waters of French Indo-China was of nearly a month's duration.[13] The French authorities appear to have

[12] Smith and Sibley, *op. cit.*, 462. [13] *Ibid.*

acquiesced in the sojourns of the Russian fleet in French waters, so that it is not a question of Russia having violated French neutrality, but of France having failed in her neutral obligation to Japan. The continuation of the voyage, the ultimate destination of which was well known to be hostile, was made possible by the reception of the Russian cruisers in French waters. Theoretically, of course, France would have extended the same hospitalities to the Japanese fleet, but under the conditions as they existed it was well known that Japan would have no occasion to ask for them.

Prior to the Civil War, the use of coal by war vessels was not of sufficient importance to raise any controversy as to its contraband character. In 1862, however, Lord John Russell directed that war-ships of either belligerent should be supplied with "so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination," and this rule has since been adopted by the great majority of powers. Identical language was used by England in her proclamations of neutrality issued in 1870, 1885, and 1898, but the instructions of February 10, 1904, changed the last clause so as to read, "or to some nearer named neutral destination."[14] The addition of the words *named neutral* seriously restricts the coaling privileges hitherto enjoyed in British ports by belligerents. The clause seems to have been interpreted as meaning that the designated port must be on the homeward route. Thus, Great Britain refused to supply coal to the Baltic fleet, since the belligerent purpose of the voyage away from national ports was well known. The governor of Malta issued a proclamation to the effect that belligerent vessels proceeding to the seat of war were entirely

[14] The King's proclamation of neutrality, issued February 11, 1904, and the letter of same date addressed to the principal departments of the government are published in the *Times* of February 12. In the Foreign Relations of the United States, 1904, p. 24, occurs an altogether erroneous and misleading statement in regard to the British letter of instructions. The statement is there made that the instructions of February 11, 1904, are the same as those issued April 23, 1898, published on page 869 of the Foreign Relations for that year. The same error occurs in the text of the British instructions published in La Justice Internationale, Aout-Décembre, 1904, from which the words *named neutral* are omitted. The text is correctly printed in the Archives Diplomatiques.

prohibited from coaling in British territorial waters. Similar instructions were sent to the governors of other British colonies.[15] Sir John Macdonell interpreted this restriction as follows:

"Thus, a Russian vessel of war arriving at Malta from Kronstadt might demand coal to take her home, but she would probably be refused coal sufficient to take her to Port Arthur. Of course this restriction might be evaded by coaling repeatedly first at the port of one state and then at that of another. But a neutral state which winked at such evasions of a tolerably well recognized rule would justly be held blamable by any international court. Nor may the belligerent cruiser receive a fresh supply in a British port until after three months, unless in special circumstances." [16]

France, as we have seen, takes a very different view. She does not regard coal as contraband of war, and she allows belligerents extensive rights as to the use of her ports and waters. As a recent French writer expresses it:

"France throws her ports wide open to belligerent war-ships; she does not limit the length of their stay; she only limits it to 24 hours when they have entered the port with prizes taken from the enemy. War-ships which sought refuge in a neutral port to escape the enemy's pursuit are free to stay or leave. If the enemy wishes to reduce them to a state of impotence, it is for him to take the necessary measures to make it dangerous for them to leave." [17]

While the questions raised during the Russo-Japanese War seem to have increased rather than simplified the complexities of the law of maritime neutrality, there is one rule of very recent origin and very radical in character which seems to have been adopted by well nigh all the powers. This is the rule that belligerent ships taking refuge in neutral ports after defeat must be dismantled and their crews interned until the close of the war. This practice is either not alluded to, or, when alluded to, condemned by most of the text writers.

[15] Smith and Sibley, *op. cit.*, p. 135; *cf.* also Hannis Taylor in the N. Am. Rev., Aug., 1905, and T. E. Holland in the Fortnightly Review for May, 1905.

[16] Nineteenth Century, March, 1904.

[17] Charles Dupuis in North American Review, Aug., 1905.

Even so recent and weighty an authority as Mr. W. E. Hall, in the last edition of his book, states expressly that a belligerent ship is not liable to be disarmed on taking refuge after defeat. "To disable a vessel, or to render her permanently immovable, is to assist her enemy." He adds, however, that "a tendency towards the enforcement of a harsher rule becomes more defined with each successive war." [18]

The first case of dismantling was, apparently, that of the Russian gunboat *Mandjur*, which arrived at Shanghai February 15, 1904, and remained there in spite of Japanese protests for several weeks. Finally, about March 31 the boat was disarmed and parts of her machinery removed. After the great naval fight of August 10, 1904, in which Admiral Togo defeated and dispersed the squadron from Port Arthur, the destroyer *Grosovoi* and the cruiser *Askold* took refuge in Shanghai, the *Diana* at Saigon (French), and the flagship *Tsarevitch* and three torpedo-boats in Kiao-Chau (German). After negotiations, in which the Japanese authorities demanded disarmament and the Russians protested against it, agreements were finally reached, in accordance with which these ships were all dismantled and their crews interned at specified places until the close of the war.[19]

Upon two occasions during the Russo-Japanese War the United States had to face this question, and in both cases the outcome was internment. The first case was that of the *Lena*, a Russian auxiliary cruiser, which arrived at San Francisco September 11, 1904, with a crew of 500 men and an armament of 27 quick-firing guns, thirty-one days out from Vladivostok. There was some excitement and speculation as to the cause of her visit. Her captain announced that her engines and boilers were in need of repairs and asked permission to dock at San Francisco. By order of the President a thorough examination was made of the vessel, which showed that she was unseaworthy and needed a thorough overhauling. Four days after her arrival the President directed that the *Lena* be taken in custody by the naval authorities of the United States

[18] Hall, International Law, 5th ed., p. 627.

[19] Foreign Relations of the United States, 1904, pp. 136, 138, 140, 323, 426; Smith and Sibley, *op. cit.*, p. 136.

and disarmed. The vessel was taken to Mare Island Navy-Yard and there disarmed by the removal of small guns, breech-blocks of large guns, small arms, ammunition and ordnance stores, and the captain gave a written guaranty that the *Lena* would not leave San Francisco until the close of the war. The officers and crew were paroled not to leave the United States until the conclusion of hostilities or until some other agreement might be reached as to their disposal between the Government of the United States and both belligerents.[20]

The other case was that of the three vessels of Admiral Enquist's squadron, the *Oleg*, the *Aurora*, and the *Jemchug*, which entered the harbor of Manila on June 3, 1905, in a terribly battered condition, having escaped from Admiral Togo's pursuit. The Russian admiral at once requested Governor Wright and Rear-Admiral Train for permission to remain and repair. After consultation with the President, Secretary Taft cabled to Governor Wright that "time cannot be given for the repair of the injuries received in battle. Therefore, the vessels cannot be repaired unless interned until the end of hostilities." The Russian Admiral gave his parole and the vessels were disarmed and interned.[21]

The prompt action of the United States in these cases attracted wide attention and was decisive in establishing this rule. No feature of the war is of more importance from the standpoint of international law. Should the rule of internment applied by the United States continue to be enforced in future wars, as there seems every likelihood that it will be, it will tend to limit greatly the area and duration of maritime contests. In fact, some publicists go so far as to favor the absolute exclusion of belligerent vessels from neutral waters under all circumstances, under penalty of internment. Such a rule would effect a revolution in the naval situation and would be the greatest step that could be taken towards universal peace. While it is hardly probable that it will be adopted in the near future, nevertheless, as I have already remarked, the tendency is in this direction, for in each successive war the lines of neutrality are drawn tighter.

[20] Foreign Relations of the United States, 1904, pp. 428 and 785.

[21] Review of Reviews, July, 1905, p. 5.

THE RELATIONS OF ENGLAND AND THE UNITED STATES AS AFFECTED BY THE FAR-EASTERN QUESTION.[1]

BY PROFESSOR AMOS S. HERSHEY,

INDIANA UNIVERSITY.

Among the many remarkable *voltefaces* in the history of international relations, none is perhaps more interesting in itself or destined to be more far-reaching in its ultimate effects on the future of civilization than the changed attitude towards each other of the peoples and governments of England and the United States during recent years. Only a decade ago our people, almost to a man, were roused to a frenzy of patriotic fervor by President Cleveland's startling message of December, 1895, threatening England with war unless she consented to submit a boundary dispute between herself and Venezuela to arbitration. It then seemed as if the spirit of hatred and suspicion against England transmitted to us by our forefathers would never die out. This spirit had been kept alive after the wars of the Revolution and of 1812 by a variety of real and imaginary grievances, including trade rivalries and boundary disputes, and it was again renewed during and after the Civil War as a result, among other things, of the Trent Affair and the Alabama and Behring Sea controversies.

But now we realize that a great change for the better has taken place in the relations between the two greatest branches of the so-called Anglo-Saxon race, or rather between the parent trunk and its largest branch. This change is so obvious to every one that I have very little fear of arousing dissent when I assert that there exists an unspoken but genuine friendship, based upon mutual sympathies and interests, be-

[1] Special acknowledgment is due to Dr. Asakawa whose excellent work entitled "The Russo-Japanese Conflict" has frequently served as a guide to the documents, and to Mr. Louis Gray for assistance in the preparation of this paper.

tween the peoples of England and the United States. Although this silent understanding has as yet found no adequate expression either in words or acts, it has affected the formal relations between the two governments and is stronger in purpose and wider in scope than mere words or a formal agreement could possibly make it. There is a growing conviction in both countries, not merely that each power will, in the future, refrain from attempting to injure the vital interests of the other, but that neither would permit serious harm to the other at the hands of a third power, and that both will try to work together in friendly rivalry at the solution of the great problems set by modern civilization.

Let us now ask ourselves, what have been the main factors in bringing about this changed attitude towards each other of the peoples of these two countries? I have neither the time nor the qualifications necessary for conducting an inquiry into what may be called its deeper causes, which some may find in economic forces and others perhaps may ascribe to psychological factors. It is my allotted task to point out one factor in this process which I believe to be extremely important, and in the discussion of which one has, at any rate, the advantage of being able to appeal to the support of public documents. The Parliamentary Blue Books on China, issued during the years 1898-1904, and the volumes on the Foreign Relations of the United States, covering this same period, contain ample evidence which tend to prove that the relations between England and the United States have been greatly affected by the Far Eastern question during the past decade. It is the purpose of this paper to try to show how the co-operation of England, Japan, and the United States in the Far East in recent years has strengthened the friendship between the two countries so auspiciously formed during the Spanish-American War.

It may not be out of place, however, before entering upon my main theme, to emphasize the fact that, as far as the people of the United States are concerned, this friendship or change of heart—a change of heart amounting almost to a conversion —had its main source or origin in the friendly and sympathetic attitude toward us assumed by the people and government of

Great Britain during the Spanish-American War. During that war it apparently dawned upon the people of the United States for the first time that, among European peoples, the English alone had any real sympathy with, or even understanding of, our actual aims and motives in undertaking to drive the Spaniards out of Cuba. Although England's sympathy with our policy during the Spanish-American War was not reciprocated by us during the Boer War, the attitude of our government was perfectly correct during that struggle, and the interests of Great Britain in South Africa were entrusted to the American consul at Pretoria, as the interests of the United States had been entrusted to the British legation at Madrid during the previous war.

The acquisition of the Philippine Islands at the close of the Spanish-American War gave us a definite foothold and greatly increased our interests in the Orient, and imposed upon us some of the burdens and responsibilities of an Asiatic power. At that time (in 1898) China was in process of partition or dismemberment into "spheres of interest" and "leases" by leading European powers. The influence of Russia was then all-powerful at Peking; for, as a result of her successful intervention in the Chinese-Japanese War and by guaranteeing a four per cent loan to China of 400,000,000 francs, Russia had placed China under a debt of fear and gratitude.

Following the example of Germany, who had exacted from China the lease of the bay of Kiao-Chau, along with valuable mining and railway privileges in the province of Shan-tung, as indemnity for the murder of two German priests, and using this bad example as a pretext, Russia had secured (on March 27, 1898) the lease of Port Arthur, as also the concession of a new railway in southern Manchuria in addition to the valuable concessions which she had already obtained in 1896.

Great Britain did not even enter a formal protest against these immoral and high-handed proceedings;[2] but "in order

[2] Great Britain failed to secure the opening of Port Arthur to the world, but Talien-wan was made an open port. On January 17, 1898, Sir Michael Hicks-Beach, then Chancellor of the Exchequer, had declared emphatically in a public speech that the door must not be closed

to restore the balance of power in the Gulf of Pe-chi-li," the British Government leased and occupied Wei-hai-Wei, opposite Port Arthur—an act which, be it said in passing, met with the approval of Japan.[3] France also demanded and obtained as her share of the spoils the lease of the Kwang-Chau Bay in southern China.

The principle of the territorial integrity of the Chinese Empire had thus been violated in the most open and flagrant manner by Germany, Russia and France; and Great Britain, too, had been, albeit reluctantly, forced to follow suit and abandon her weak and apparently half-hearted attempts to uphold that policy in the Far East. On April 28, 1899, England even entered into an agreement with Russia engaging "not to seek for her own account, or on behalf of British subjects or of others, any railway concessions to the north of the Great Wall of China, and not to obstruct, directly or indirectly, applications for railway concessions in that region supported by the Russian Government." Russia, on her part, engaged, in similar terms, not to seek any railway concessions in the basin of the Yang-tse in behalf of Russian subjects.[4]

On October 16, 1900, while she was still engaged in her struggle with the Boers, England even entered into an agree-

in China. He said that the British government did "not regard China as a place of conquest or acquisition by any European or other power," and that it was "absolutely determined at whatever cost, even—and I wish to speak plainly—if necessary at the cost of war, that that door shall not be shut." See London *Times* for January 18, 1898. In a communication to Sir N. O'Conor, dated March 28, 1898, Lord Salisbury said, "Speaking generally, it may be said that the policy of this country is effectively to open China to the commerce of the world and that our estimate of the action of other powers in the Far East depends on the degree to which it promotes or hinders the attainment of this object. It follows from this that the occupation of territory by foreign powers is to be judged by the results, direct and indirect, immediate and remote, which it is likely to have on the commercial interests of the world, and the right of all nations to trade within the limits of the Chinese Empire on equal terms." Parliamentary Blue Book on *China*, No. 1 (1898), No. 133.

[3] *China*, No. 1 (1899), Nos. 35, 49, 79, 81, 107, etc.

[4] For the text of the Anglo-Russian agreement, see *China*, No. 2 (1899), No. 138.

ment with Germany in which, it is true, both powers disclaimed territorial designs upon China, and mutually engaged to uphold the principle of the open-door there; but it was also stipulated that "in case of another power making use of complications in China, in order to obtain under any form whatever such territorial advantages, the two contracting parties reserve to themselves the right to come to a preliminary understanding as to the eventual steps to be taken for the protection of their own interests in China." [5] By this agreement the principle of a balance of power in the Far East was practically suggested as a possible alternative or substitute for that of territorial integrity.

It will thus be seen that China was in sore need of a champion [6] when Secretary Hay stepped out upon the arena of Asiatic politics and issued his now famous Circular Note of September 6, 1899, to the powers in order to "maintain an open market for all the world's commerce and to remove dangerous sources of international irritation." Mr. Hay instructed our American representatives abroad to endeavor to obtain from each of the powers claiming "spheres of interest" in China formal assurances to the following effect: (1) that it would not interfere with any treaty port or with the vested interest of any nation within a so-called "sphere of interest" or leased territory which such nation may have in China; (2) that it would maintain the Chinese treaty tariff (except in "free ports") under Chinese management, *i. e.*, to guarantee equality of treatment for all nations under the most-favored-nation clause; and (3) that there shall be equality of treatment for all nations in respect to harbor dues and railroad charges.[7] By March 20, 1900, favorable replies from all the

[5] For this agreement and the correspondence relating to it, see *China*, No. 5 (1900), No. 1.

[6] In 1898-99 China, or rather British interests in China, had found a strong champion in Lord Beresford who published the results of his investigation and observations in China in 1899. His work, which appears to have been widely read, bore the significant title of "The Break-up of China." Lord Beresford's mission, which was of an essentially commercial character, was however, not an official one.

[7] See *House Doc.* (Foreign Relations, 1899), 56th Congress, first session, pp. 131 ff.

powers concerned—Great Britain, Germany, France, Italy, Russia,[8] and Japan—had been received, and Mr. Hay was able to announce that the consent of each nation consulted would be considered "final and definite."

In his communication of September 22, 1899, to Lord Salisbury, our ambassador at the Court of St. James, Mr. Choate, called special attention to the fact that the interests of England and the United States in the maintenance of trade and commerce in the East differed "not in character, but in degree only," and he observed that our President conceived such action as that asked for "to be in exact accord with the uniformly declared policy and traditions" of Great Britain. "He (the President) understands it to be the settled policy and purpose of Great Britain not to use any privileges which may be granted to it in China as a means of excluding any commercial rivals, and that freedom of trade for it in that empire means freedom of trade for all the world alike. Her Majesty's Government, while conceding by formal agreements with Germany and Russia the possession of 'spheres of influence or interest' in China, in which they are to enjoy special rights and privileges, particularly in respect to railroads and

[8] The reply of Russia had not been without a significant reservation. "As to the ports now opened, or hereafter to be opened to foreign commerce by the Chinese Goverinment, and which lie beyond the territory leased to Russia, the settlement of the question of customs duties belongs to China herself, and the Imperial Government (of Russia) has no intention whatever of claiming any privileges for its own subjects to the exclusion of other foreigners." But "in so far as the territory leased by China to Russia is concerned, the Imperial Government (of Russia) has already demonstrated its firm intention to follow the policy of the 'open door' by creating Dalny (Ta-lien wan) a free port; and if at some future time that port, although remaining free itself, should be separated by a custom-limit from other portions of the territory in question, the custom duties would be levied, in the zone subject to the tariff, upon all foreign merchandise without distinction as to nationality." All the powers except Italy made their assent to the desired declarations conditional upon a similar assent on the part of all the other interested powers. The reply of Great Britain was the most explicit and comprehensive, for she specifically included "the leased territory of Wei-hai-Wei and all territory in China which may hereafter be acquired by Great Britain by lease or otherwise, and all spheres of interest now held or that may hereafter be held in China." See *House Doc.*, cited above.

mining enterprises, has at the same time sought to maintain what is commonly called the 'open-door' policy, to secure to the commerce and navigation of all nations equality of treatment within such 'spheres.' The maintenance of this policy is alike urgently demanded by the commercial communities of our two nations, as it is justly held by them to be the only one which will improve existing conditions, enable them to maintain their positions in the markets of China, and extend their future operations." [9]

During the Boxer uprising of 1900, as also during the long negotiations which followed, all the powers interested in the fate of China repeatedly pledged themselves to maintain the "open door" and the territorial integrity of the Chinese Empire. The latter principle was especially urged by Russia, but was at the same time being violated by that power in Manchuria, which was overrun and occupied by Russian troops. These measures of military occupation were, however (as the Russian Government was careful to explain to the powers [10]), intended to be merely "temporary" in their nature, and had been solely dictated by the absolute necessity of repelling the aggression of the Chinese rebels, and not with interested motives, which are absolutely foreign to the policy of the Imperial Government" [of Russia]. The world was assured that as soon as peace was restored and the safety of the Manchurian railway secured "Russia would not fail to withdraw her troops from the Chinese territory, *provided such action did not meet with obstacles caused by the proceedings of other powers.*" [11]

During the campaign of 1900, as also during the negotiations which led up to the signing of the Peace Protocol of September 7, 1901, between China and the Allied Powers, the relations between England, Japan, and the United States were

[9] Blue Book on *China*, No. 2 (1900) No. 1. Cf. *House Doc.* cited above.

[10] See *China*, No. 1 (1901), No. 256. Cf. *House Doc.* of 56th Congress, 2nd session (Foreign Rel. 1900) pp. 304 f.

[11] The *italics* are the author's.

particularly close, and they appear, in the main, to have acted in harmony.[12]

The support of the United States and Japan [13] aided Great Britain in checking the aggressive tendencies of Russian policy in northern China during this period, and this assistance must have been especially gratifying to England at a time when she was engaged in her great struggle with the Boers in South Africa. For had England been compelled to fight the battle of the "open door" and territorial integrity of China alone during this crisis in her history, she must inevitably have yielded to a coalition between Russia, France, and Germany, who would probably have seized this favorable opportunity to continue or complete the process of dismembering the Chinese Empire which they had so successfully begun a few years before. In that case the gates of China would have been closed to the rest of the world, and the greater part, at least, of the immense potential resources of that vast country and its teeming population must have fallen a prey to the sys-

[12] So, *e. g.*, in July, 1900, the British and American admirals voted against the proposal to give Russia the control of the railway line from Tongku to Tientsin which the Russians had siezed and were operating in spite of the fact that it was mortgaged to British bond holders. On the strength of the decision of the Admirals, the Russians claimed the whole railway from Taku to Peking. Russian and British troops almost came to an open conflict at one stage of this dispute. See Blue Book on *China*, No. 7 (1901), *passim*, especially No. 4.

The United States was particularly active in securing a reduction of the amount of the indemnity imposed upon China. The United States and Great Britain both strongly opposed the Russo-French proposal of a joint guaranteed loan. See *China*, No. 1 (1902) *passim*, especially Nos. 136 and 173.

On the other hand the United States, Russia, and Japan opposed the extreme demands of England and Germany on the Chinese Government in the matter of the capital punishment of Prince Tuan, Duke Lan, and Tung-fu Hsiang. See *China*, No. 6, (1901) *passim*, especially Nos. 55, 57, 67, 83, 119, 135, 141, 172, 193, 205 and 233.

[13] The policy of Japan appears at this time to have been much less aggressive than it was a few years later. Inasmuch as Japan furnished more than her proportion of troops for the relief of the Legations at Peking during the Boxer uprising, her government asked for and received financial assistance from England. See *China*, No. 3 (1900), Nos. 265 ff.

tematic commercial exploitation and exclusive protective systems of these countries.[14]

In February, 1901, Japan, Great Britain and the United States made similar representations to China against her signing the Alexieff-Tsêng Agreement for the pacification of Manchuria. The United States, *c. g.*, reminded China of the "impropriety, inexpediency, and even extreme danger to the interests of China, of considering any private territorial and financial engagements, at least without the full knowledge and approval of all the powers now engaged in negotiations."[15] In reply to an appeal from the Emperor of China, who declared that "it was impossible for China alone to incur the displeasure of Russia by remaining firm," Great Britain and Japan remonstrated in March, 1901, against the signing of the drastic Lamsdorff-Yang-Yu Convention, which would probably have resulted in the complete Russianization of Manchuria."[16]

On February 3, 1902, Secretary Hay lodged a vigorous protest against the terms of a proposed agreement between Russia and China, according to which the Russo-Chinese Bank was to be given a practical monopoly of all railway and

[14] On March 15, 1901, the German Chancellor openly declared in a speech in the Reichstag that "there were no German interests of importance in Manchuria," and that "the fate of that province was a matter of absolute indifference to Germany." But he added that Germany had informed China that "she would deprecate the conclusion at the present time of any agreement with no matter which power, which would impair China's financial resources." Cited by McCarthy, The Coming Power, p. 105. Cf. Scott to Lansdowne in *China*, No. 6 (1901), No. 211. Of course Germany would have demanded concessions elsewhere in China in return for her complaisance toward Russia in Manchuria. The relations between Russia and France during this period are too well-known to admit of any doubt as to the attitude of France.

[15] *China*, No. 2 (1904), No. 19. See also Nos. 8 and 15 for the attitude of Great Britain and Japan. Germany also made representations to China on this occasion, but with greater reservation and in somewhat different language. See *China, op. cit.*, Nos. 12 and 13.

[16] *China*, No. 6, (1901), Nos. 202 and 207. See also *China*, No. 2 (1904) Nos. 16, 21, 24, 28, 34, etc. The United States does not seem to have remonstrated on this occasion. At least such action does not appear in the published documents. She probably considered her former representations sufficient for the purpose.

mining concessions in Manchuria. It is highly probable that similar protests were made by Great Britain and Japan, but no reference to such action appears in the published documents.[17] There can, however, be no doubt but that Secretary Hay's protest was in accordance with the views of these two powers.[18] He reminded the Russian and Chinese Governments of the repeated assurances given by Russia of her devotion to the principle of the "open door" in China, and said: "The Government of the United States can view only with concern an agreement by which China concedes to a corporation the exclusive right to open mines, construct railways, or other industrial privilege; that such monopoly would distinctly contravene treaties of China with foreign powers, affect rights of citizens of the United States by restricting rightful trade, and tend to impair the sovereign rights of China and diminish her ability to meet international obligations; that other powers will probably seek similar exclusive advantages in other parts of the Chinese Empire, which would wreck the policy of absolutely equal treatment of all nations in regard to navigation and commerce in the Chinese Empire; and that, moreover, for one power to acquire exclusive privileges for its nationals conflicts with assurances repeatedly given to the government of the United States by the Russian ministry for foreign affairs of a firm intention to follow the policy of the "open door" in China, as advocated by the United States and accepted by all the powers having commercial interests in China." [19]

[17] Asakawa (The Russo-Japanese Conflict, p. 194) calls attention to this fact.

[18] The attitude of the British Government was clearly indicated in a conversation between Lord Lansdowne and Mr. Choate on February 11, 1902. See Mr. Choate to Mr. Hay in *House Doc.* of 57th Congress, 2nd session, (For. Rel. 1902-3), pp. 511-512.

[19] Paraphrase of telegram to Mr. Conger on February 11, 1902. See *House Doc.* of 57th Congress, 2nd session, Vol. 1, pp. 275-76. Cf. *Ibid.*, pp. 926-28. Count Lamsdorff's reply to this note is very interesting and significant. He reminded Secretary Hay of the fact that "negotiations carried on between two entirely independent states are not subject to be submitted to the approval of other powers." He gave the assurance that Russia had "no thought of attacking the principle of the 'open door'

The situation in the Far East was greatly affected by the defensive alliance between England and Japan, signed on January 30, 1902. This alliance was induced by the discovery, as the result of frequent interchanges between the two governments, that "their Far Eastern policy was identical," and it declared for the "open door" and the territorial integrity of the Chinese Empire.[20] It greatly strengthened the hands of both governments in dealing with China and Russia, and, although the United States made no declaration to that effect,[21] it was well known that our sympathies and interests were also "identical" with those of Great Britain and Japan in the Orient.

This agreement appears to have had the desired effect. On April 8, 1902, Russia concluded with China the now famous convention providing for the gradual evacuation of the whole

as that principle is understood by the Imperial Government of Russia," and that Russia had "no intention whatever to change the policy followed by her in that respect up to the present time. If the Russo-Chinese Bank should obtain concessions in China, the agreements of a private character relating to them would not differ from those heretofore concluded by so many other foreign corporations. . . . It is impossible to deny to an independent state the right to grant to others such concessions as it is free to dispose of and I have every reason to believe that the demands of the Russo-Chinese Bank do not in the least exceed those that have been so often formulated by other foreign companies, and I feel that under the circumstances it would not be easy for the Imperial Government to deny to Russian companies that support which is given by other Governments to companies and syndicates of their own nationalities." *Ibid.*, p. 929.

[20] Lord Lansdowne to Sir Claude MacDonald, *The British Parliamentary Papers for Japan*, No. 1, (1902).

[21] The United States Government officially disclaimed all knowledge of the negotiations between Great Britain and Japan leading up to the Anglo-Japanese Agreement; but in a memorandum, dated March 22, 1902, it expressed its gratification in seeing in the Russo-French Declaration of March 16, 1902, as also in the Anglo-Japanese Agreement, "renewed confirmation of the assurances it has heretofore received from each of them regarding their concurrence with the views which this government has from the outset announced and advocated in respect to the conservation of the independence and integrity of the Chinese Empire as well as of Korea, and the maintenance of complete liberty of intercourse between those countries and all nations in matters of trade and industry." See *House Doc.* of 57th Congress, 2nd session, pp. 930, 931.

of Manchuria in three successive withdrawals within eighteen months after the date of the agreement, "*provided that no disturbances arise and that the action of other powers place no obstacle*" in the way of such withdrawal.[22]

After a very partial fulfillment of her engagement to withdraw from Manchuria,[23] Russia made seven additional demands upon China in April, 1903, as a condition for the completion of the process of evacuation. These were of a highly exclusive nature, and included stringent measures for closing Manchuria to the economic enterprises of all foreigners except Russians and for preventing the opening of new treaty ports in Manchuria without the consent of Russia.[24] These demands were in direct opposition to the principle of the "open door," and it is not in the least surprising that their publication was followed by firm representations at Peking on the part of Japan, Great Britain, and the United States.[25]

[22] The *italics* are the author's. For the French text and the English translation of this Convention see Blue Book on *China*, No. 2, (1904), Nos. 54 and 51. At the same time Mr. Lessar handed to the Chinese Plenipotentiaries a note in which he declared that "if the Chinese Government, in spite of their positive assurances, should, on any pretext, violate the above conditions, the Imperial Government [of Russia] would no longer consider themselves bound by the provisions of the Manchurian agreement, nor by its declarations on this subject, and would have to decline to take all responsibility for all the consequences which might ensue." See *China*, cited above, No. 51, inclosure, p. 38.

[23] By October 8, 1902, at the end of the first six months, Russia had withdrawn her troops from the southwestern portion of the Sheng-King or Mukden province as far as the Liao river. Her pretended evacuation of the remainder of the Mukden province, including Mukden itself, appears to have been a mere farce or sham. See Asakawa, *op. cit.*, p. 239. There was not even a pretence at evacuation in the case of Niu-Chwang from which Russia had repeatedly promised to withdraw her troops.

[24] For the most authentic text of these demands published in England, see *China*, No. 2 (1904), No. 94. For the original Russian note sent by M. Plançon to Prince Ching, see *House Doc.* of 58th Cong., 2nd session, Vol. 1 (Foreign Rel.) pp. 56-58. In his interview of April 28, 1903, with Mr. McCormick, the American ambassador at St. Petersburg, Count Lamsdorff denied in the most positive terms that such demands were made by the Russian Government, but the denial of Count Lamsdorff was partly offset by the admissions of Count Cassini in his remarkable interview published in the New York *Tribune* for May 1, 1903, cited by Asakawa, p. 249.

[25] *China*, No. 2 (1904), Nos. 79 ff. In a communication, dated April

An important step in the direction of strengthening the "open-door" policy in China was taken by the United States on October 8, 1903, the date which had been set for the final evacuation of Manchuria. On that date we concluded a commercial treaty with China which secured the opening of Mukden and An-Tung in Manchuria to international trade and settlement in spite of Russian opposition.[26]

It was in strict accordance with a number of precedents that Secretary Hay took the initiative on February 10, 1904, in proclaiming that "the neutrality of China, and in all practicable ways her administrative entity," [27] should be respected by Japan and Russia during the Russo-Japanese War. Although this proposal was said to have been made at the suggestion of Germany, the burden of enforcing it against Russia would undoubtedly have fallen upon Great Britain and the United States had such action become necessary. While the attitude of the Governments of both these countries toward Russia was entirely correct during the war—more so, in fact,

28, 1903, to Sir M. Herbert, Lord Lansdowne said it was the "desire and intention" of the British Government "to act in accordance with what we conceive to be the policy of the United States, namely, to open China impartially to the commerce of the whole world, to maintain her independence and integrity, and to insist upon the fulfilment of treaty and other obligations by the Chinese Government which they have contracted towards us." *Ibid.* No. 90.

[26] On the same day (October 8, 1903) there was also concluded a commercial treaty, providing for the opening to the world's trade of Mukden and Tatung-Kao, between China and Japan. On September 6, 1903, Russia had made six fresh demands on China. One of these demands implied that no foreign settlements or concessions to foreigners were in the future to be granted in Manchuria. These demands were rejected by the Chinese Government at the instigation of the British and Japanese Ministers at Peking. See *China*, No. 2 (1904), Nos. 147 ff., especially No. 156.

The attitude of Russia towards the rights and privileges of foreigners in Manchuria may be inferred from Count Benckendorff's admissions to Lord Lansdowne on July 11, 1903. He said in effect that "the Imperial Government [of Russia] have no intention of opposing the gradual opening by China, as commercial relations develop, of some towns in Manchuria to foreign commerce, *excluding, however, the right to establish 'Settlements.'* *China*, No. 2 (1904), No. 133.

[27] *House Doc.* of 58th Congress, 3d session (For. Rel., 1904), p. 2.

than was the conduct of France and Germany toward Japan—nevertheless the sympathies and good wishes of the people of the United States as well as those of England were enlisted on the side of Japan. Admiration for the splendid fighting qualities of the Japanese, a fear of the Russian advance, a feeling that Japan was fighting our battle in the Far East, were sentiments common to the people of both countries. The governments of both countries made similar protests against the Russian doctrine of contraband, and our leading newspapers took the English side in every important controversy which arose between Russia and Great Britain, as *e. g.*, in respect to the seizure of the *Malacca*, the sinking of the *Knight Commander*, and the *North Sea Incident*.

Our American traditions and principles forbid our becoming a party to the recent offensive and defensive alliance between England and Japan, but our sympathies and interests are clearly enlisted on the side of that partnership. There exists a gradually growing conviction that the interests of Great Britain and the United States in the Orient are identical. In their Far Eastern policy both countries have aimed at the enlargement of commercial opportunities and the expansion of trade rather than at territorial aggrandizement or political control, whereas Russia, France and Germany appear to have sought after " spheres of interest " and " leases " with a view of acquiring special economic privileges or commercial monopolies for themselves. All that the people of England and America ask for is a fair field and an equal opportunity to enter into free and open competition with the other nations of the world for the markets of the East. In other words, the United States and England stand together in demanding a " square deal " in the Orient.

THE COMPARATIVE RESULTS, IN THE ADVANCEMENT OF PRIVATE INTERNATIONAL LAW, OF THE MONTEVIDEO CONGRESS OF 1888-9 AND THE HAGUE CONFERENCES OF 1893, 1894, 1900, AND 1904.

BY SIMEON E. BALDWIN, LL.D.,

NEW HAVEN, CONN.

Public international law has been sarcastically defined as "a compound of ethics, etiquette, and fraud, administered by armies and navies." If in England and the United States it has ever worn such an appearance, this belied what with them is its real character. Their all-embracing common law has made both public and private international law a part of itself, to be administered, precisely as municipal law is, by the courts whenever a question turning upon their acknowledged rules may come up for judicial determination.[1]

But what are these acknowledged rules? To too large an extent they are what the judges, who may be trying a particular case, choose to recognize as generally established and resting on right reason. This is in accordance with the genius of Anglo-American law. It is foreign to the spirit of that which is preferred by the civilized world in general. Most nations choose to express all their laws through the voice of their legislatures. They publish them in the form of codes. A natural step for them to take next is to publish in like form and by like authority such rules of public and private international law as they may deem worthy of recognition and enforcement. But here the "like authority" is not the legislative power of any single government. International law is for all governments. It ought, therefore, to have the formal approval of all. Hence any official codification will naturally take the form first of a treaty or convention between several

[1] Triquet v. Bath, 3 Burr., 1480; In re Martin, L. R. Appeal Cases, 1900, Probate, 211; Moultrie v. Hunt, 23 N. Y., 394.

nations, owning contiguous territory, or connected by common interests. Such conventions, when ratified by the law-making power in each, will be the act of that power, as fully as if emanating from it in the first instance, and will be virtually a legislative code for each and all.

Within the last twenty years there have been three marked instances of codification of this description. One, in the field of public international law, embodied in the three Conventions agreed to at The Hague in 1899, is familiar to all. Two others have attracted less public attention, because dealing wholly or mainly with matters of private international law. Of these, one proceeded from a Congress of seven South American States and the other from a Conference of twice that number of European powers.

No field of political science is explored with more difficulty than that which belongs to private international law. Public international law has at least some boundaries and monuments that are well known and universally recognized. A common court of the world has now been set up to administer it. But private international law can hardly look for the establishment of such a tribunal to protect its integrity. Modern government proceeds from the consent of the governed. Nations may agree to contribute to the support and to respect the judgments of the Hague Tribunal, because only national interests will come before it. Private individuals can become parties to no such agreement. The only legitimate courts for them are those which deal with private rights, and are part of a government established by a particular people for their own good. It is only rights enforceable in such courts with which private international law has to do. It is, nevertheless, a branch of science, and of a science which, above all others, is important to mankind. Its scientific character requires that it should deal with universal conceptions and deal with them in a settled form and order. This it is theoretically possible to achieve in two ways.

1. There may be a common agreement on certain rules of judgment to be applied in all courts throughout the world in the disposition of all controversies of a similar nature as to matters of private international law.

2. There may be a common agreement to determine which of two or more differing rules of judgment shall govern the disposition of certain controversies as to matters of private international law, according to their particular nature and origin, as the case may be.

In other words, private international law may either seek to lay down universal rules which are the same in every country, or, acknowledging that this is impossible, may content itself by determining which of several conflicting rules, each having the sanction of a particular nation, shall be applied in giving remedial relief under the particular circumstances of a particular class of causes.

The idealist will think the former of these methods the only one deserving the name of scientific. The opportunist will be ready to accept the other, at least for the present stage of the progress of the world; remembering that the principle of accommodation is yet a principle.

Of the two efforts in recent years to advance private international law which have been described as made in different quarters of the globe, one was inspired by a primary, though not unlimited, devotion to the first method; the other moved on the lines of the second.

Early in 1888, the Argentine Republic and Uruguay concurred in issuing separate but simultaneous invitations to all the other South American republics to unite in holding at Montevideo in the following August an international judicial congress. Its special object was to be the prevention of conflicts of laws which might "prejudice the free development of the reciprocal relations of the South American States."

At the appointed time, delegates appeared from the governments of all these states except Columbia, Ecuador, and Venezuela. The Congress sat until the following February, and approved eight draft-treaties on the following subjects: civil law, commercial law, penal law, the law of procedure, literary and artistic property, trade-marks, patents, and the exercise of the liberal professions. An additional protocol was also agreed on, containing various special provisions as to the application of the laws of each of the contracting parties

in the territories of the rest. These projects were approved *ad referendum*, there being still required in the case of each of them, in order to give it effect in and between any of the powers, ratification first by the legislative department of each, and then by the department of government charged with the management of foreign relations.[2]

Each treaty contained provisions looking to the adhesion to it of nations not invited to the Congress, as well as of the three which were invited, but did not send delegates. These provisions were not very clearly worded, but as explained by the terms of the final protocol seem to authorize (at least upon the invitation of the Argentine Republic and Uruguay), the adhesion of any power to any of the treaties, provided, and provided only, such adhesion should be acceptable to each of the powers which had participated in the Congress, and which might subsequently ratify the treaty in question.

In fact, communications were sent by the Argentine Republic and Uruguay to other powers, outside of South America, inviting their adhesion.[3] Spain was one of these, and on November 9, 1893, through her department of foreign affairs, signified to Uruguay her acceptance *ad referendum* of this invitation.[4]

The parliamentary action necessary to make the treaties operative, up to December 11, 1894, had been had in four countries, Uruguay, Peru, Paraguay, and the Argentine Republic; such ratifications on the part of each having been given in the order named.[5] Ecuador followed in 1902, and Bolivia in 1903.[6] Chili refused to ratify at least two of them, those on Penal Law and Civil Law.[7] Brazil declined to ratify the

[2] Torres-Campos, *Bases de Una Legislación sobre Extraterritorialidad*, 221.

[3] Reports, etc., of the International American Conference of 1889, 568.

[4] Torres-Campos, *op. cit.*, 338. The necessary action by the Cortes has not been secured, and probably never will be.

[5] *Ibid.*, 344, 235.

[6] Doc. No. 310, 57th Congress, 2d session, 804; Doc. No. 458, 58th Congress, 2d session, 559.

[7] Reports, etc., of the International American Conference, 596, 907.

latter.[8] Guatemala, in 1903, approved those on procedure, copyrights, trade-marks, and patents.[9]

The four Conferences of the Hague were initiated by Holland in 1892, by which government the subjects for consideration at each of them were carefully restricted and defined. At the first, held in 1893, official delegates were present from Holland, Germany, Austro-Hungary, Belgium, Denmark, Spain, France, Italy, Luxembourg, Portugal, Roumania, Russia, and Switzerland. At the second and third, held respectively in 1894 and 1900, these powers were again represented, and also Sweden and Norway. At the fourth, held in 1904, a delegate was present from Japan, and signed the final protocol.

The Conference of 1893 agreed on tentative projects of laws or treaties, on four subjects: the constitution of marriage; the transmission and authentication of documents; commissions for taking testimony; and successions. The second reconsidered these, and agreed on a protocol for submitting to the several powers represented a project for rules on six subjects: the constitution and effects of marriage; divorce and separation; guardianships; civil procedure, embracing the points covered by the second and third projects of the preceding year; bankruptcies; and successions.

In most of the countries taking part in these Conferences parliamentary ratification is required before any such convention can become operative. In 1899 (April 27), such action having been secured wherever it was necessary, the convention as to civil procedure went into effect between all the powers, subject to a reservation by Italy on a single point (the *cautio judicatum solvi*).[10]

At the third Conference, held in 1900, the other conventions were reconsidered and revised, draft conventions agreed to by twelve of the powers represented,[11] on four subjects: the

[8] *Annuaire de Législation Étrangère*, 1890, 1003.

[9] *House Doc.*, No. 310, 57th Congress, 2d session, 840.

[10] *Actes de la Troisième Conférence de la Haye, pour le Droit International Privé*, 78.

[11] I count Sweden as one of the powers, and not Norway.

constitution of marriage; divorce and separation; guardianship; and successions.

Of these, the conventions as to the constitution of marriage, divorce and separation, and guardianship received parliamentary approval in seven countries, being a majority of those which had given their consent at the Conference, and went into full effect in 1904 (Aug. 1),[12] as between these, namely, Germany, France, Sweden, Holland, Belgium, Roumania, and Luxembourg. Spain joined them a few weeks later, and Switzerland and Italy in July, 1905.[13]

By the fourth Conference certain amendments were recommended in the convention on civil procedure, and revised conventions adopted on four subjects: the relations between husband and wife, established by marriage; bankruptcies; successions; and lunatics.[14]

We have, then, an agreement fully established between six nations of South America for regulating most questions of private international law that can arise in their courts.

We have also an agreement, established in 1899, between fourteen European nations for regulating as to their judicial tribunals the proof of foreign documents; the execution of rogatory commissions (by which the courts of one country render assistance to those of another); suits by foreigners *in forma pauperis;* and the arrest of foreigners on civil process; and also an agreement between all but one of these nations that foreigners may sue without giving any security to the defendant for his costs of suit, whenever none is required from native citizens, but that any judgment for costs against the plaintiff in such a suit may be enforced (*i. e.,* rendered *exécutoire*) in any other of the countries which are parties to the convention.

[12] *Mitteilungen der Internationalen Vereinigung für vergleichende Rechtswissenschaft,* etc., for 1905 (No. 24), 477.

[13] *Journal du Droit International Privé,* 1905, 797, 1151. These conventions are printed in the Appendix to the Report of the Proceedings of the Universal Congress of Lawyers and Jurists, held at St. Louis in 1904.

[14] *Actes de la Quatrième Conférence de la Haye pour le Droit International Privé,* 224.

We have further an agreement, established in 1904 and 1905, between ten European nations for regulating most questions of private international law that can arise in their courts concerning the constitution of marriage; divorce and separation after marriage; and guardianships. It seems probable that Austro-Hungary and Portugal will also give their adhesion to it.[15]

The South American conventions are to remain in force indefinitely, subject to the right of any signatory power to withdraw on two years' notice. Each of the European conventions runs till the end of five years from the date when a majority of the powers, agreeing to its proposition, made a formal deposit of their respective ratifications at the Hague;[16] but at the expiration of that time it is to be deemed to be tacitly renewed from five years to five years, subject to denunciation by any power, on six months' notice, as to its own obligations under it. In this way the Hague convention as to civil procedure is now in force for its second term.

Let us now ask, what are the main differences between the work of the Congress of Montevideo and that of the Conferences at the Hague?

The former had more ambitious aims.

It commenced its labors under the inspiration of a project for a general code of private international law, prepared by Dr. D. Gonzalo Ramirèz, the minister of Uruguay at Buenos Ayres, at whose instance Uruguay and the Argentine Republic had been induced to call it together.[17] This project was based on the principle that to claim the benefit of private law is a right of humanity, and the common patrimony of all men.[18] Nationality, therefore, it was argued, rules political,

[15] *Proceedings of the Universal Congress of Lawyers and Jurists at St. Louis*, 145.

[16] As it was to take effect 60 days after such deposit, it can only run for four years and ten months as respects its first term.

[17] Torres-Campos, *op. cit.*, 208, 219; International American Conference Reports, etc., 74.

[18] *Cf.* Art. 8 of the Italian Civil Code; and Fiore, *Droit Int. Privé*, I, § 104.

but not civil rights. The Congress of Jurisconsults at Lima in 1877 had proceeded on another theory. It had accepted nationality as the criterion of personal status and capacity. The code which it proposed had, therefore, fallen by the way. Modern European jurists were treading in the same path. They were for making the civil laws as to a man's juridical relations follow his national law, wherever he might go, as well in regard to his purely personal relations as to those affecting his property, even if situated in a foreign territory. This was opposed to the doctrine of Anglo-American jurisprudence and to the spirit of the South American Constitutions.

The Ramirèz code consisted of 101 articles, followed by a commentary justifying the principles upon which it was framed. It was originally prepared as the basis of a treaty between Uruguay and the Argentine Republic only, but made for itself a wider sphere.

The original memorandum submitted by the government of the Netherlands to the delegates accredited to the first Conference at the Hague in 1893 had, on the other hand, a much more restricted scope. It referred to the work of the Congress of Montevideo as more comprehensive than that which they were invited to undertake. This was simply, at the outset, to endeavor to reach an agreement on certain general principles in respect to a few selected subjects.

The opening address of the President (Dr. T. M. C. Asser) set forth this as the proper aim of the Conference with great plainness. We shall not, he said, aspire to the general unification of private law. On the contrary, it is precisely the diversity of national laws which makes the necessity felt of a uniform solution of international conflicts. "Unification is neither possible nor desirable, save for certain kinds of laws of a character essentially cosmopolitan."

The Conferences at the Hague all proceeded on the lines thus indicated, and there was scarcely an allusion to the South American conventions in any of their discussions or reports.

Time will serve to note but a few of the differences in the conclusions of these bodies.

By the Hague conventions personal status generally follows nationality. By the Montevideo conventions, it generally follows domicil. It is needless to remark that so far as this difference is concerned, the latter accords better with the principles of Anglo-American law.

It may, however, well be doubted if those principles are in their nature permanent.

The political, like the economic tendencies of our times, set strongly towards consolidation and centralization. Italy has pressed the rule of nationality as against that of domicil, because she was busy in creating a nation with a strong central authority. Germany has followed her lead from a similar cause. The waning of the power of our own States, as the people of the United States are becoming more closely knitted together by the bonds of commercial intercourse and the pressure of world-politics, makes in the same direction. So for Great Britain does the rapid extension of her imperial policy.

But the Montevideo conventions are not altogether consistent in this respect. Take, for instance, the provisions as to the constitution of marriage. Title IV of the treaty on International Civil Law relates to marriage and divorce, and seeks to cover the entire field in three brief articles.

By Art. 11, which treats of the constitution of marriage, the capacity to contract it, as well as its formalities, continuance, and validity are to be governed by the law of the place where the contract is entered into; saving only exceptions from want of age, near relationship, prior subsisting marriage, and the killing by either party of one to whom the other had been previously married, in order to free the latter from the bond of matrimony.

Here the *lex domicilii* plays no part, nor does nationality. Art. 13, however, provides that the law of the matrimonial domicil shall govern as to the legal separation of the couple, and as to divorce, provided the grounds of divorce be sufficient under the law of the place where the marriage took place

The Hague convention on the constitution of marriage alone covers eight articles. While it agrees with the Montevideo convention in letting the *lex loci celebrationis* regulate the

form of marriage, it saves the rights (1) of the nation to which the parties belong, to refuse to recognize it, unless the requirements of its own laws have been also observed, and (2) of all nations to recognize it if, though null in the place of celebration, it was solemnized in a form sufficient by the national laws to which each party was subject. It also recognizes marriages of foreigners according to the forms of their own law, at a legation or consulate, in a country that makes no opposition. Nor can such opposition be of avail if founded on the insufficiency of a previous divorce of one of the parties, or on ecclesiastical vows. On the other hand, if the law of the nation to which the parties belong forbids their marriage on purely religious grounds, but the *lex loci celebrationis* nevertheless permits it, the marriage will be good there, and in such other of the signatory powers as may choose to recognize it. What their national law is, parties intending marriage are bound first to prove to the satisfaction of the authorities of the place of celebration.

In contrast with the single article which has been described in the Montevideo convention regulating divorce and separation, one of the Hague conventions is entirely devoted to the subject. It contains nine articles, and follows the former in requiring grounds for a divorce which are recognized as sufficient by the law of more than one country. The Montevideo convention calls for grounds so recognized both by the law of the matrimonial domicil and by that of the place where the marriage took place. The Hague convention calls for grounds recognized both by the *lex fori* and by that of the nation or nations to which the parties belong, unless the former treats the authority of the latter alone as sufficient.

The ignoring of the *lex fori* which marks the Montevideo convention seems plainly an element of weakness. To dissolve a relation of such social importance as that of marriage is what no state should be called upon to do, unless its own law justifies such relief under similar circumstances.

The great and vital distinction between the Montevideo and the Hague conventions is that the former aims at dealing shortly with universals, while the latter is content to deal spe-

cifically with particulars. The Latin-American love for legal generalization showed itself even more strongly in the convention adopted by the second Pan-American Congress of Mexico in 1902, looking to the immediate and complete codification of both public and private international law.[19] Brazil was the first to propose this, and the Bolivian parliament ratified the convention in 1903.[20] I am informed by the Secretary of State of the United States that Honduras did the same, but no other powers gave their adhesion to it, and the convention has therefore lapsed.

Universal propositions are apt to require universal exceptions. The general protocol which closed the list of the Montevideo conventions provides (Art. IV) that the laws of other states shall never be enforced as against the political institutions, police regulations, or customs entering into the *lex fori*. This certainly opens a wide door of relief from affirmations of general principles, the application of which might be found inconvenient in practice.

The South American courts, in expounding these conventions, have been inclined to give full force to all their exceptions and limitations, even if they have not added to them by construction. Let me close this paper by mentioning a single instance of this practice which well illustrates it.

A lawyer in Buenos Ayres, Señor Lamarca, retained by the New York Life Insurance Company to defend a suit upon a policy, satisfied himself that it had been fraudulently issued, and through improper and criminal practice on the part of a certain insurance solicitor in Montevideo, named Castro. Thereupon he filed a complaint in a criminal court in the latter city, as attorney for the company, charging Castro with this offence. By the law of Uruguay, no lawyer can act for a client as attorney of record without a written power of attorney. Señor Lamarca had none authorizing him to institute such a prosecution, nor was the company aware of his action in this respect. Señor Castro made defense and was acquitted.

[19] *Senate Doc. 330*, 57th Congress, 1st session, 203; *Report of the Proceedings of the Congress*, Mexico, 1902, 147.

[20] *Doc. 458*, 58th Congress, 2d session, 559.

He then procured the institution against his accusers, including the New York Life Insurance Company among them, of civil and penal actions, demanding £250,000 damages for the injury which had been done him by their false charges. Uruguay follows the European practice of allowing a demand for damages in favor of the party injured by an offence to be joined with a criminal complaint.[21] An appearance was entered for the company in defense to the claim for damages, but again without any written power of attorney. Judgment was rendered in December, 1900, condemning Señor Lamarca to six months' imprisonment, and declaring the company liable for such damages as might be assessed by arbitrators according to law. They were then assessed by arbitrators, as is the practice there, after hearing the company (which then appeared by an attorney holding a written power), at the full amount claimed, with costs, including counsel fees.

The company had a branch office in Montevideo. Payment of the judgment having been refused there, proceedings in insolvency were instituted against it, and a decree of adjudication obtained, notwithstanding a law which provided that such proceedings could only be brought by one holding a commercial obligation. Señor Castro then made over his claim to a syndicate, which undertook its enforcement for its own profit.

By the treaty of Montevideo as to procedure, judgments and awards of arbitrators in civil and commercial matters, rendered in one of the signatory powers have in the territory of any other the same force as in the territory of the former, provided they were (a) rendered by a tribunal competent under the principles of international law (*dans l'ordre international*); (b) were final; (c) the defendant having been legally summoned, or represented, or regularly declared in default; and (d) were not contrary to the laws of public order in the country where their enforcement might be sought. Article IX required the due execution of rogatory commissions for the performance of any acts required by any of the treaty provisions.

[21] See the French *Code d'Instruction Criminelle*, Arts. 6, 358, etc.

The companion treaty as to international commercial law provided that one might be adjudged an insolvent wherever he had a commercial domicil, though incidentally carrying on business in any other nation, or maintaining agencies or branch offices there which did business on the account and credit of the principal house; and if there should be two or more independent commercial houses in different countries, the courts of each were to have jurisdiction in insolvency over the house maintained there.

The syndicate, relying on these treaties, asked and obtained rogatory commissions from the judges of Uruguay to those of the Argentine Republic for the institution of three suits; one to sequester the property of the company's branch office at Buenos Ayres; the second, to sequester a public deposit of securities which it had made there with the government for the protection of creditors; the third, to compel payment by the branch office of counsel fees, amounting to 30,000 piastres, taxed against the company in the Montevideo judgment.

The two commissions first named were presented to the court of commerce of Buenos Ayres, which responded by issuing writs of sequestration founded on the Montevideo adjudication in insolvency, both against the local branch office and the public deposits.

The third commission was presented to one of the Federal judges, who declined to interfere for the enforcement of the judgment for counsel fees, on the ground that the treaty had no reference to judgments rendered in the course of any criminal proceeding.

This ruling was affirmed on appeal, but appeals from the judgments of the court of commerce were sustained, the higher courts holding that the only commercial domicil of the insurance company was in New York; its branch offices in Montevideo and Buenos Ayres being simply agencies and not independent commercial houses.

By thus looking into the foundations of the Uruguayan judgments, the Argentine courts read into the treaty of Montevideo a rule that a judgment rendered in one of the signatory governments could only be enforced in another by virtue of

an order from a judicial tribunal of the latter, in the nature of an *exequatur* or a decree of homologation.[22]

It would seem that the award of $1,250,000 against the insurance company must have been grossly excessive. Nevertheless it was made in a proceeding to which the company was regularly a party, and in which it had been duly heard. The rogatory commissions seeking its enforcement were also regularly issued. The treaty of Montevideo, taken literally, would seem to entitle the syndicate to collect its judgments by the aid of the Argentine courts. But the mode of collection pursued was through proceedings in insolvency, and here a jurisdictional question fairly arose. If the company had no commercial domicil in Uruguay, the courts of that country had no power to adjudge it an insolvent debtor.

The Hague Conferences provided in their convention as to insolvency procedure, that an adjudication in insolvency in one of the contracting nations could not be enforced in another without a formal *exequatur*, and set out in particular what must be shown to obtain one. The conditions of the *exequatur* which the ruling of the Argentine courts requires are necessarily left to be settled by the general principles of jurisprudence recognized in the country from whose courts the enforcement of the judgment is sought. Only such of those principles certainly as seem essential to international justice should be applied.

It is worthy of remark that several years after her adhesion to the treaty of Montevideo, the Argentine Republic (May 29, 1901), concluded a treaty with Italy as to rogatory commissions and foreign judgments, much more on the lines of the Hague Convention. By this, judgments of the courts of either power are to be enforced in the other only upon an *exequatur*, to be granted if, and only if, (1) the court was one of competent jurisdiction; (2) the parties were properly cited, or voluntarily appeared; and (3) the judgment rested on a personal obligation, or one not contrary to the law or

[22] See a discussion by Professor E. S. Zeballos, of the University of Buenos Ayres, in the *Bulletin Argentin de Droit International Privé*, I, 341.

inimical to the public order of the nation where the *exequatur* is sought.[23]

DISCUSSION.

ARTHUR K. KUHN: There are some broader aspects of the questions presented by the very interesting paper of Judge Baldwin. It will be seen that the policy pursued in Europe differs essentially from that which we are pursuing in the United States. In Europe, a number of treaties have been arrived at, which determine in advance the method in which a conflict of law shall be determined, when two or more systems of legislations within the treaty union clash with one another, whereas, here, in our own country, the codifications undertaken by the annual conference of commissioners on uniform state legislation tend merely to reduce the number of conflicts by making legislation uniform.

It will be seen that the latter method can never hope to ameliorate conditions existing between this country and other countries of the world, because of the divergent notions prevailing there and here upon questions of public order and social justice. Under the former system, however, the clash of legislation constitutes the very basis of the solutions.

The question remains whether it is advisable for us to keep aloof from this tendency to proportion in advance the sphere of influence of each system of legislation by treaty provision. It is true that there are certain constitutional limitations which would prevent the United States from entering into concert of legislation upon this subject, which indeed in its last analysis is local in character.

I will not attempt to enter into any technical discussion upon the extent to which the Federal powers may, or may not, go in dealing with a codification of Private International Law. A most instructive paper could be written dealing with constitutional limitations upon the treaty-making power to enter into treaties with foreign countries on questions of private law in which international interests are involved. It is sufficient

[23] *Annuaire de Législation Étrangère*, XXXI, 651.

to say that such a limitation is not absolute, and where a question of the access of foreign citizens to our courts is concerned, the treaties have often been held to modify the local law of each State. The Hague Treaty dealing with matters of Procedure might, therefore, well come within the power of the treaty-making body of the United States to adopt at least in part.

American citizens litigating in European countries are seriously hampered by local rules against aliens, imposing conditions of access to tribunals of justice. The effect of these conditions has been mollified by the codification to which Judge Baldwin has referred, but as the Anglo-American sphere of jurisprudence is practically the only one not represented in that particular treaty union, citizens of this country and subjects of Great Britain are now in a much worse position than those of any other country.

Public International Law has made great progress in protecting the civil rights of non-combatants of all nations in time of war. It would seem that the most elementary progress in *Private* International Law requires that the question of access to civil tribunals and the interchange of records for the better administration of justice be taken out of the plane of local legislation and placed upon a universal, or if you please, an international basis. If I understand the codification aright, the Hague Treaty had this end in view when it provided for a complete interchange of communication of official legal acts within the treaty union, and a removal of conditions for the access of foreigners to local tribunals.

In the light of these considerations, it is a cause for regret that the Anglo-American sphere of jurisprudence has failed to contribute its share toward progress in this direction by as much as it has neglected to send delegates to the Hague Conferences on Private International Law.

THE CASE FOR MUNICIPAL OWNERSHIP.

BY FREDERIC C. HOWE,
CLEVELAND, OHIO.

For the first time in our history America is face to face with a struggle for democracy—political, industrial, social. The issue is most clearly expressed in our cities. It is coming to the front in a number of commonwealths. It is severing party ties and forecasting a new political alignment. The new democracy is laying its foundations for a permanent home. It is adopting measures for the permanence of its control. These measures are direct legislation through the initiative and referendum, direct primaries, and municipal home rule. These are the political agencies sought.

Municipal ownership is but an industrial expression of democracy.

And the question is not so much, Do we believe in municipal ownership? The question is: Do we believe in democracy? Do we really want a government of the people, with all of its possibilities of good and evil? A government gradually broadening the significance of liberty, beyond the purely personal relations of the early Bills of Rights? And in passing on the achievements of democracy, it is necessary to bear in mind that we nowhere have a representative government. Democracy enjoys only so much liberty as privilege permits to it. Its ideals enter legislation only in so far as those ideals do not conflict with big business. Democracy has been drugged by business interests which are constantly struggling for its control. Even in those cities where the greatest achievements have been made, the community has been divided like an armed camp, and its energy devoted to self-protection rather than to the accomplishment of a definite program.

The question, Does municipal ownership pay? is least of all a financial one. No other agency of government is subjected to a purely commercial test. The motive of our police,

fire, health, street, park, school, and library departments is one of safety, convenience, comfort, happiness. Even the annual deficit in the postal department is willingly borne, because the social service is so great. The real test of municipal ownership is not a monetary one; not the relief of taxation; not a profit or loss account; not even cheap water, gas or electricity. It is rather one of higher civic life.

But measured by the taxpayer's standard, municipal ownership pays. It pays in water; it pays in electric lighting; it pays in municipal markets and docks. Even Cincinnati has made a splendid financial success out of the Cincinnati Southern Railroad. And this success has been achieved in the face of the fact that our cities are governed by the big privileged interests, the poison of whose interference extends even to those departments in which they have no direct pecuniary interest. And there is no demand, no movement, in any of our cities, for a return to private ownership. The water, electricity, and gas enterprises are as sacredly held as are the schools, the parks, the police, and fire departments. This at least is the democratic test of success or failure.

Here and there the reports of experts may show inadequate provision for depreciation, no payment for taxes and the prevalence of the spoils system. This is particularly true of electric lighting. But it must be remembered that the electric lighting plants of Detroit, Chicago, and Allegheny have been denied the right to sell light, current and power for commercial use. They are limited to public lighting; they are denied the most profitable source of revenue. Even in the face of this fact it is claimed that the total saving of the city of Detroit, including lost taxes, was $1,183,813 in ten years time, through the public ownership of the electric lighting plant. The system was opened by Mayor Pingree in 1895. At the lowest bid then obtainable from a private company, on a ten-year contract, Detroit would have had to pay for lighting $2,533,538. During this period the total outlay on the public plant has been but $1,299,725, which includes a sum of $239,729 for depreciation. The average cost of operation for ten years has been but $43 per arc lamp, and the average total cost

has been $65, against $102, which was the best price obtainable from a private company. Last year the operating cost was reduced to $35 per arc lamp, while the total cost, including all charges, was something less than $60.

The evidence of municipal water plants is much more conclusive. A cursory examination seems to show that municipal ownership has justified itself here, even on the commercial side.

The city of Chicago has a water plant whose capital cost is $37,436,010. The plant could be duplicated to-day for $25,000,000. Its outstanding indebtedness is but $4,062,107. The net profit in physical property is approximately $21,000,000. In 1904 the gross earnings were $4,171,194, and the operating expenses $1,736,846. The gross profits amounted to $2,434,348. Deducting $164,727, the interest paid out of earnings, the net profit for the year amounted to $2,269,621.

The present structural value of the Cleveland Water Works is $9,900,000. The indebtedness of the plant is but $4,200,000. The net assets belonging to the city, in excess of the obligations, is therefore $5,700,000. The gross earnings in 1904 were $792,412. The operating expenses in the same year were $349,239. This includes a large sum for maintenance. The interest charges paid out of earnings were $154,595. The net earnings in excess of all charges were, therefore, $288,578. In addition to this, the city supplies free water for fire and police purposes, for flushing and cleaning the streets, for the public schools, and for all other agencies whose value is approximately $250,000 more.

The Detroit Water Works are valued at $7,836,601. Against this is a bonded debt of but $1,155,000. The net value over and above all liabilities is $6,681,601. The operating receipts for 1905 were $589,955, and the operating expenses but $170,131. The net earnings in excess of operating expenses and interest were $359,884.

The statistics of the Boston plant are more difficult to ascertain, as the city only owns its distributing system. The source of supply is controlled by the Metropolitan Water Board. But the bonded indebtedness against the Boston plant is exactly one-half its capital cost and the operating profits within

the city in 1904 were slightly in excess of $2,000,000. This sum was almost equivalent to the state assessment and the interest charges to be paid out of earnings.

The water system of New York has been valued at $125,000,000. In 1903 there was an indebtedness against the plant of $77,000,000. The cost of operation, of maintenance and interest charges was $5,200,000, which is the total cost of the water supply of the Metropolis. The annual income is approximately $9,000,000, and the difference, amounting to $3,800,000, is the net profit to the city from operation. The net assets owned by the city, in excess of the indebtedness, are $48,000,000. According to the statement of Robert G. Monroe, the Commissioner of Water Supply, Gas, and Electricity under the Low Administration: "Had the water supply been in private hands, financed upon parallel lines, and similar business methods followed to those pursued by the private lighting monopoly, the citizen of New York would be paying between eighteen and twenty millions yearly for water, instead of between five and five and a half millions, the annual cost under public ownership." [1]

Almost every large water plant in America offers indisputable evidence of financial success; and the same is generally true of the smaller ones. As a rule, the public plants are constructed with more permanence than are the private ones. Their engineering talent has been of a good order and provision for the future has been anticipated. Private plants, on the other hand, menaced as they are by short franchises or municipal purchase, have been unable or unwilling to meet the financial burdens incident to securing a pure and adequate supply. The magnificent plants of Boston, New York, Buffalo, Cleveland, Detroit, Milwaukee, and Chicago, which have been largely constructed out of earnings, and which have been projected during an era of very general municipal incompetence, form a standing protest against the suggested incapacity of municipal enterprises. Of the plants in smaller towns, the same is true. Their capital expenditure has been heavy

[1] *Light and Water Service of New York*, The International Quarterly, October, 1905.

and the administration has been responsive to the demands of the sanitary authorities. Many of them have introduced artificial filtration systems, and have stamped out typhoid fever and similar diseases which are traceable to impure water.

A similar showing might be made of markets and of docks. One of the most striking examples of financial advantage is the Cincinnati Southern Railway. It was constructed at a cost of $18,000,000. Its present physical value is very much more, and is said to be close to $25,000,000. It is leased on a basis which will return it to the city free of debt in little more than a generation.

But I do not care to dwell on the financial side of public ownership, satisfactory as the exhibit seems to be. Experts may quarrel over these figures, for they are taken from official sources. But it is self-government, not dividends; political morality, not cheap service; a responsive and responsible city administration, not relief from taxation, that is involved.

At last we are coming to shift the blame for the corruption of our cities. Heretofore it has been attributed to democracy; to the spoils system; to the indifference, if not the corruption, of the voter. We have been satisfied with the surface phenomena. We have treated our failures as the failures of democracy. But we do not have a democratic government. What we really have in our large cities is a business-men's government, and a business-men's government rooted in privilege. Privilege has always been a source of corruption. Either the privilege of unjust taxation, or the privilege of monopoly, will account for nine-tenths of the corruption in city, county, and nation during the last generation. The principal agencies in our cities are the franchise corporations. The cause of their activity is a desire for monopoly uncontrolled by law. Their privileges are secured through a bargain with the city or the state. This bargain is maintained through a partnership with the party. To maintain the fruits of monopoly is the object of their effort. In Republican states and cities the alliance is with the Republican party. In Democratic states and cities the alliance is with the Democratic party. In most states and cities privilege is bipartisan. It

employs both parties. In city after city the boss is but the agent of some one of the public service corporations. Through this agency the big privileged interests nominate councilmen, tax assessors and taxing officials. The thing that is known as the system is the offspring of these interests, united as they are with the party organization. The boss has become the business agent of privilege. This is true of Murphy in New York, of Durham in Philadelphia, of Cox in Cincinnati, of Butler in St. Louis, of the Flinn-McGee combination in Pittsburg. The millionaire boss has arisen, not through petty graft, nor through the spoils system, not even through contracts with the city. His political dominion, as well as his wealth has come through an alliance with big business in the form of franchises and tax evasions.

The struggle for franchise grants is the underlying issue in every election in New York, Philadelphia, Pittsburg, Cincinnati, Cleveland, Toledo, Chicago, St. Louis, Denver, and in every other large city that I know. It is disguised under party names, it is skillfully made to assume misleading issues. But the real motive is a business one, and the business interests are grouped about the franchise companies.

No satisfactory data are available for determining the value of such franchises. Here and there incomplete semi-official investigations have been made. From these investigations it appears that the value of such privileges is almost fabulous. The franchises of New York are estimated to be worth $450,000,000. In 1903 they were appraised for taxation at $235,184,325. In the city of Toledo, Ohio, $23,000,000 of stock and bonds were issued upon a street railway system whose physical value was not in excess of $5,000,000 and whose franchises begin to expire in 1910. Some years ago the value of the physical property of the seven traction companies in the city of Chicago was appraised at $44,932,011. The then market-value of the securities issued upon these franchises, a considerable portion of which have already expired, many of which are in litigation, and all of which are under danger of condemnation by the city, amounted to $120,235,539. Mr. Clarence Darrow has estimated the value of the

stocks and bonds upon the street railways of the city alone, at $150,000,000, measured by the rate of dividends, and the total amount of the tangible property at very much less than $35,000,000.[2] The franchises of the traction companies alone, therefore, are worth in excess of $115,000,000. This is more than three times the total bonded indebtedness of the city. It is this treasure that the city is fighting for, and has been, for ten years.

It is these privileges that men gamble for. The cards are the parties, the winnings are franchises, and the stakes which are played are our institutions. It is this that invites corruption. The power of Tammany Hall comes almost exclusively from the public service corporations. They are the real enemies of reform. The same is true of Philadelphia, as it is of almost every large city in the country. The means employed are bribery, party tyranny, campaign contributions, and public sentiment, as made by the agencies controlled by privileged interests. Even the tax evasions are of imperial proportions. Prior to the passage of the Ford Franchise Bill they amounted to over $3,000,000 a year in New York City alone. But the evil influence of privilege is not confined to the city. It extends to the state at large. It is necessary to control the assembly in order to prevent adverse legislation, to control taxation, to prevent municipal ownership. This necessitates constant interference in state affairs. In many states it has involved the election to the United States Senate of discredited men. From this point of vantage, privilege is able to make use of the party machinery, and through federal patronage to control the primaries and conventions. Thus it is that the entire system of government is corrupted. For as the big business interests are driven out of the city, they retreat to the state, and from the state ascend to the Capital at Washington.

But positive corruption is not all. This is but a fraction of the price we pay. The unseen influences are equally bad. The persistence of party allegiance is largely traceable to the

[2] *The Chicago Traction Question,* International Quarterly, October, 1905.

voice of privilege, which, controlling the press and the agencies of expression, make use of obsolete party claims for the obstruction of independent voting. Independence in local affairs would be easy of achievement were it not for the campaign contributions and class spirit, which are involved wherever franchise interests are at stake.

It is this fact that deprives reform of the best talent of the community. Interwoven as privilege is with banking and business interests, with the bench and the bar, the press and the pulpit, city administration is bereft of those most competent to carry it on. Democracy is deprived of its natural leaders. For the stockholder, the banker, the lawyer, and the well-to-do classes generally find their patriotism and their pocket at war. In consequence it is almost impossible to enlist these classes in any reform movement.

The extent to which this is true was seen in the recent uprising in Philadelphia. In spite of the aroused public sentiment, the committee was forced to admit, in its humiliation, that in all the vast city of Philadelphia it was difficult to secure one first-class lawyer who would permit himself to be retained by the people.

It is this that has forced democracy to find its leaders among men whose previous training is adequate for the large issues of municipal administration. And we cannot reclaim to public affairs the better-to-do class until we unite its purse with its civic interest. We cannot hope for good government while the prizes of life are to be gained in antagonism to good government. Reform is not retarded by the unwillingness of democracy to accept it; it is palsied by the alienation of those best fitted to serve the community. I am convinced that thousands of men would gladly serve their city were their talents free from allegiance with private interests.

Such service can only be secured through a change in our attitude of mind. The program of bettering politics by bettering men is only possible when the desire for commercial gain and the fear of social ostracism is lifted from men's minds. And this can be most readily achieved through municipal ownership.

Public control of private monopoly is the only alternative to public ownership. Competition has everywhere failed, and of necessity will continue to fail. It inevitably results in combination. Under a policy of regulation, the power must be lodged either with the city or the state, with the town council or in a supervisory commission. Both policies have already been extensively tried. For years our cities have endeavored to correct the abuses of excessive charges and indifferent service. It is this that produces corruption. It is not only the desire for franchises; it is the necessity of being free from interference that keeps the franchise corporation in politics even after a franchise has been secured. Tax officials must be controlled, aldermen, directors of public works, and mayors must be restrained. There are constant extensions to be obtained, together with permits for street openings, while bad service must not be interfered with. It is the policy of regulation that explains the persistent influence of franchise interests in local politics.

But even were this not true, regulation is practically impossible. The award of a commission, the decision of the council, is but the beginning of a contest. It is then transferred from the city to the courts, with all their vexatious delays. Litigation may be prolonged for years, and the probability is strong that the attempted regulation will be found to be unconstitutional. In the city of Cleveland a controversy with the street railway company was thus prolonged for years. The city now has a half-dozen cases in the courts. In Detroit, Milwaukee, and Indianapolis efforts to reduce street railway fares was carried into the federal courts, and their determination long delayed. In each one of these instances the courts decided that the regulation was in violation of some vested right or privilege.

The alternative of state, as opposed to municipal regulation, has been tried in Massachusetts. A similar law was recently passed in New York. Such measures but shift the controversy from the city to the state, from the council to the legislature. In the choice of members of the commission the franchise interests always manage to make their voices heard. In

commenting upon the law of the latter state creating the gas and electric commission, the Citizens' Union of New York City said:

"Moreover the commission is likely in years to come to prove merely political, and will probably become a safeguard to the corporation rather than a protection to the public."

A score of states have vainly attempted to regulate the railways. The opponents of federal railway control are to-day pointing to the failures of such attempts, as well as of the Interstate Commerce Commission, as a reason why further regulation is futile. For twenty years regulation by city, state, and nation has been attempted with such a general confession of failure that in any other matter we would be ready to admit its futility.

As a matter of fact, regulation is impossible. It involves dual control. The community is ignorant of the company's conditions, and has no means of enforcing its authority. The conflict of interest is so great that the most insignificant demands are only conceded after an exhausting contest. Moreover, only by experiment can the city determine what can be done. And monopoly dares not experiment. Monopoly is always indolent. It is always unwilling to move. Its stock-jobbing interests have become superior to its industrial functions. For this reason it cannot permit any public regulation or experiment of its own volition, because of the fear of disturbing the value of its securities, which have become the best of banking collateral. It is this fact more than any other that explains the reactionary attitude of monopoly interests. Their industrial functions have become subordinate to their stock-jobbing possibilities.

Even in Great Britain, where the street railway, gas, electric lighting, and telephone undertakings are subject to a supervision which is most careful and exacting, regulation has been abandoned for ownership. Parliament has protected the public in every way. Rates of fare, prices for gas, and electricity have been fixed by law; the method of construction is supervised, as is the service to the community. Annual reports are required to be published, and the Board of Trade and Local

Government Board have ample powers of investigation. Even with such oversight, the tramways, electricity, and water supplies have been all but universally taken over by the cities, while 256 gas plants have been either acquired from private companies or erected by the towns. All over the United Kingdom (in the face of the most perfectly adjusted system of regulation) private ownership is being abandoned.

The alternative, with us is not public regulation or public ownership: it is unregulated private monopoly or public ownership.

As to many of these things most men will agree. The showing of public ownership in water and markets, and to a considerable extent in gas and electricity, is at least creditable. The indictment of privilege, of the franchise corporation, of big business has gone unchallenged. The condition of our cities—on the one hand, unorganized democracy on the other, the natural leaders fighting for the control of the city, ofttimes unconscious of the cause of the alignment—is a condition too universal to be questioned. And the failures of regulation, like the Blue Laws of our cities, fill the statute books of our states.

The question to be considered is, are conditions due to ignorance, indifference, and inherent defects of popular government, or are they the natural and inevitable consequences of an industrial policy? Is correction to come through better men or better institutions? Is the evil personal, or is it economic? Is relief to be found through wiser franchises and further regulation, or by the destruction of privilege, and the removal of temptation through public ownership and operation? Some of the gains of ownership are certain, some are merely conjectural. It is necessary to measure the cost as well as the gain.

There can be no question but that municipal ownership will remove the most tempting stakes from the public gaming-table. It will take the big privileges out of city politics. It will free the city from class antagonism, and relieve reform of its heaviest burden. Under municipal ownership there will be no readily organized class wanting bad government. This

union of all classes for good government is habitually ignored in the discussion of the question. But it is the biggest factor in the case. To-day the influential classes, the classes which combine the talent and the influence, the classes which control the press and public opinion, are either actively engaged in promoting bad government, or they are hostile to reform. Under municipal ownership they will be free to work for the city. The press will be ready to criticise. A contest for good government will be substituted for a contest for privilege. Under municipal ownership, unorganized democracy will be allied with intelligent leadership. And no corrupt administration could long maintain itself in office against such a coalition. To-day reform movements are conspicuously wanting in big business and professional men. There is an antagonism between their citizenship and their business. Moreover, with the franchise question removed, the so-called respectable element would be free to enter politics; free to enter the council; free to serve the city's interest; free to work for good government. We cannot possibly measure this gain. Our entire political system is poisoned by the present conflict of interest. With this conflict removed, the schism which now divides our communities will be removed, and the very motives which now ally the talent of the city with bad government will then identify it with good government.

There would still remain the private contractor and the spoils system. Many persons otherwise ready for municipal ownership are fearful of the municipal employee. Mr. Robert G. Monroe, speaking of the spoils system in New York, says:

"Neither has New York's municipal water supply proved a political menace. Surely to-day it is neither a pregnant source of official corruption nor a potent adjunct to any political machine. Under the civil service laws, municipal employees are practically less subject to political control than the employees of the average public service corporation, which is constantly compelled to make and give places to political workers." [3]

[3] *Light and Water Service in New York*, The International Quarterly, October, 1905, page 33.

This statement will be corroborated by almost any one familiar with the average city. Is it possible for us to compare the water supply, which the city owns, with the gas and street railway system, which it does not own? We can judge for ourselves which is more active in politics; which maintains the lobby in the council chamber and at the legislature; which divides the community, and which contributes to campaign funds.

It is possible that we have shifted the emphasis in our efforts for the merit system. We have insisted that civil service reform should precede public ownership; that the spoilsmen must first be exiled before democracy can be trusted with further undertakings. As a matter of fact, the spoils system is a symptom of other conditions. It is a result and not a cause of bad government. It persists because of the abstention of the city from big enterprises. It is a result of economic causes, not of democracy.

Under public ownership the spoils system could not long remain. All classes would unite in demanding its abolition. We would not tolerate the sacrifice of our comfort and convenience from official rotation. This is the history of Civil Service Reform in the Federal Service, as well as in the police and fire departments of our cities. No administration which sought thus to perpetuate itself in office could long defy public opinion. It would be subject to hourly inspection. It would be under constant surveillance. Even with all of the big services municipalized, the public employees would not equal ten per cent of the voting population. And no administration would dare to sacrifice the convenience or safety of the public undertakings. We have seen this in New York where, even during the worst years of the Tammany régime, the railways of the Brooklyn Bridge were free from the spoilsmen. Under municipal ownership all classes would be able to protest effectively at the polls.

Nor is this all under municipal ownership. A co-ordinated administration of public affairs would be possible. Transit, water, gas, electricity and power could be supplied with a single purpose of promoting the public convenience. A

single agency would control the streets. Far-sighted construction work could be laid out. Subways could be built to serve a variety of purposes. The city's growth could be anticipated with the wisdom of a contractor erecting a building. There would then be no conflict of interests. An example of this is seen in the new King's Way, laid out by the London County Council from Southampton Row to the Strand. It was built from the bottom up. Subways for the street railways underlie the center of the street, while on either side sewers and immense conduits were built for taking care of water, gas, electricity, telephones, and other services.

But the great gain from municipal ownership is a communal one. A conscious city policy would then be possible. The problem of the slums would be open to correction, if not to cure. A far-sighted program of transit would enable the city to disperse its population into the country and provide it with rapid and easy access to work. A similar program would be possible in water, gas, electric light and power. Public convenience could be promoted through the substitution of gas and electricity for heating and power. The condition of the poor would be improved and the morals of the city generally elevated. This has been the policy of the British city. Street railway fares have been greatly reduced. They now average in the neighborhood of 2½ cents, and oftentimes less. Gas is sold at from 40 to 70 cents per thousand cubic feet, while electricity is furnished at a price which makes it available to all classes. By the cheapening of these services the burdens of the very poor can be relieved. And it need not be argued that transit, light, and water have become primary necessities which must be satisfied before any other activity is possible. Next to rent, they are the heaviest item in the domestic budget.

We cannot have a conscious city policy until this is done; we cannot build and plan for an organized life. To-day all our strength and talent is devoted to protection. Our cities are in a state of armed resistance. In consequence all other issues and all other matters are, of necessity, pushed into the background. Nor can we plan a city with this dual control.

We are as helpless as a builder whose elevators, plumbing, and lighting are in the hands of outside and hostile interests.

These are some of the gains. They are by-products of the greater gain which would follow from an awakened public interest. We have assumed that good government would come from little government; that the less the city undertook, the better would be its performances. We have sought to improve the personal before we corrected the economic evils. We have reversed the rules of life in the discussion of this question. In my opinion, good government will come with more government. Efficient administration and honest administration will come when the city does so much for its people that their interest and affection will be awakened thereby.

A city with big interests will invite big men to serve it. Men of talent will not accept a post which is shorn of power. And under public ownership the big men will be free to enter politics. To-day they are excluded by adverse pecuniary or class interests. They are alienated even from reform organizations. The banker and the broker, the bench and the bar, the press and the pulpit, all express a distrust of democracy, which is really a fear that their privileges will be endangered. Consider for a moment the change which would result in public opinion if the franchise corporations of New York and Chicago were in the hands of the city. From what source could corrupt funds come; from what section of the press would the machine be supported; from what class would the boss receive his approval; by whom would the party be divided? Then the press would demand honest and efficient administration with one voice; the big financial interests would throw their backing to the Citizen's Union and the Municipal Voter's League; the East Side would have as its ally Wall Street and the press. Organized class antagonism would tend to disappear, for no interests antagonistic to good government would remain, save those of the criminal class and the spoilsmen. Reform would become popular. The model charter would come in as a matter of course. The spoils system would find difficulty in surviving a single session of the legislature. Other departments of the city would be

toned up, for even the schools, the libraries, the parks, the public health and fire departments are sacrificed through the organization which is maintained for the control of the other departments of the government. This is the testimony of Great Britain. The renaissance of her local government is said to date from the big undertakings which her cities have assumed.

Municipal ownership is, therefore, not an isolated issue. It is not a question of cheaper or better service; it is a question of self-government; of government by the people rather than government by privilege. It is but a cross-section of the same contest that is being waged at Washington; that has been disclosed in state after state and city after city. It is the struggle of democracy seeking to divorce itself from a privileged class.

MUNICIPAL OWNERSHIP.

BY PROFESSOR WINTHROP M. DANIELS,
PRINCETON UNIVERSITY.

The present is in many respects an opportune moment to enlist recruits under the banner of municipalization. The many recent exposures of criminal conspiracies of corporation managers and promoters who have long masqueraded as business men have fairly whetted the public appetite for municipal experimentation. Moreover, one must be peculiarly slow of heart not to perceive that the air just now is vibrant with keen hopes of restoring to our democracy in city and state something of its original vigor. Among the exponents of this wholesome political reaction are found many who advocate municipal ownership and operation as the surest means of purifying our municipal politics. Whereas the plea for municipalization was formerly based on the ground of protecting the citizen's pocket, it is now urged as the only adequate guarantee of honesty in city politics. I desire merely to point out in passing that this plan of driving private corporations entirely out of city politics by entrusting to the city the direct administration of public service enterprises is a remedy whose logical application reaches far beyond the municipal domain. The possible betrayal of the public interest is not confined to the corrupt grants of franchises by city governments. Not a tariff measure is framed by Congress, not an appropriation bill is passed, not a contract awarded by federal, state, or local governments where the same possibility of evil does not lurk. A consistent extension of this doctrine would charge these branches of the government with an infinity of industrial tasks, to preclude the chance that they may violate their trusts at the instigation of dishonest corporations.

I do not deny the transcendent importance of the political phase of this issue, if once its necessity is convincingly established. But pending a decision upon the political issue, I de-

sire to signalize the far-reaching character of the economic aspect of the case. There can be no doubt that when a city undertakes an industrial enterprise, the financial test of its affording the service at a self-sustaining price is a narrow—in some instances even a misleading—test of the success of the experiment. Without subscribing to the paradox that "the desirability of municipal trading is actually in inverse ratio to its commercial profitableness," there is much truth in the other contention that "the balance sheet of a city's welfare cannot be stated in figures"—or in figures alone. The character of the service rendered, the comparative price at which it is furnished, the prompt suiting of service to the changing needs of the people, the prompt introduction of improved material apparatus, and the search for new expedients, to say nothing of the wider range of healthful social changes, if any, must all be weighed in balances with other weights than dollars. But granting all this, I still contend that our somewhat matter of fact electorate will wisely insist on attaching primary importance to the following consideration:—is the city able to render equally efficient service as a private corporation at a really self-sustaining price lower than can be expected from the private corporation? That this is the first and most serious question with the reflective American citizen is handsomely exemplified in my opponent's recent book "The City, the Hope of Democracy." After his enlivening analysis of the cause of our political ills he discovers in municipal ownership the way out, and thereafter immediately entitles his next chapter, "Does Municipal Ownership Pay?" It is to a consideration of the evidence on this point that I would direct attention.

When we remember that the whole urban population, and not any special class of that population, is our client; that the industrial functions to be assumed are not the hereditary functions of civil government; that the investment to be made will reach literally into the thousands of millions; and that ill-success will be registered in heavier taxes and damaged public credit, a very strong preponderance of evidence ought to be forthcoming that such enterprises will pay before we advise

the assumption of the risk. What is the character of the evidence offered in support of this claim? My opponent in the chapter previously mentioned is content to rest his case for the financial success of municipal trading upon the experience of Great Britain, and chiefly upon the statistics of municipal trading collected by the Local Government Board. It is manifestly impossible within the limits of this paper to attempt anything like a thorough-going analysis of the evidence in question. But certain broad aspects of the matter are indisputable. In the first place the evidence, especially of the statistics compiled by the Local Government Board, has failed to convince a considerable number of careful inquirers that municipal trading in Great Britain has been a success even from the narrow financial standpoint. The margin of apparent profit in the aggregate has been so narrow on the capital investment as to leave it a disputable point whether, with adequate allowance for depreciation, any real financial profit whatever has emerged. Major Leonard Darwin, in his analysis of the average returns made by productive undertakings to the Local Government Board for the four years ending March 31, 1902, estimates that on gas-works, as yet the most profitable branch of such undertakings, municipalities should expect to make a profit on new municipal gas-works of a little over one-half per cent for thirty-two years, and 5.4 per cent forever afterwards. (*Municipal Trading*, p. 216.) And his final conclusion as to the direct financial results of municipal trading is "that the net result to the nation will be neither a considerable financial loss nor a considerable financial gain" (p. 283). The British evidence is clearly disputable. In the second place, the reliability of the statistical data has been and is seriously questioned. The Joint Select Committee of the Lords and Commons, in their report of 1903, declare that so far as all County Councils, London Borough Councils, and Urban District Councils are concerned (all of them subject to the Local Government Board audit), that "the auditors are not accountants, and are not, in the opinion of the committee, properly qualified to discharge the duties which should devolve upon them." The findings of the committee, as well as

its recommendations as to a more accurate auditing system, go far to discredit any undue reliance upon the returns.

Moreover, there is no evidence to substantiate the allegation that municipal trading has, as a general thing, lessened the burden of local taxation in England. It is to be conceded that in particular instances, profits from municipal trading have been turned over in aid of the rates. But the careful statistical inquiry of Miss Alice Lee, an abstract of which was published in Vol. XIII of the *Economic Journal*, stands as yet, to the best of my knowledge, unrefuted, that "the increase of loans for remunerative public works is associated with an increase of rates"—be the connection causal or not—and that at the present time municipal trade has no very material effect on municipal taxation in England. That this is the case would seem to be corroborated by Mr. Barnard Shaw's significant contention that "the relief of the ratepayer, whose burdens are heavy enough to crush all enthusiasm for municipal schemes that threaten to raise the rates, should be accompanied by taxation of income, heavily graduated and differentiated against unearned income" (*Municipal Trading*, p. 99).

It is perfectly true that in certain cases municipal industries in particular cities appear beyond question to be eminently successful. The Glasgow and Liverpool tramway systems may serve as good examples, and many others there doubtless are. But to offer British experience as evidence of a strong balance of probability in favor of the financial success of municipal trading in this country is to blink the fact that the British statistical data now available are largely the reports of town governments desirous of making a good financial showing, whose accuracy is fairly questionable. It is to blink the fact that the narrow margin of presumptive profit shown even by these data has not proved convincing to many careful investigators in England; it is to blink the fact that hitherto municipal trading has produced no general lessening of municipal rates in England; and finally, it is to neglect the manifold differences in municipal politics here and abroad.

As to whether it pays in this country to municipalize public-service industries, the testimony hitherto adduced, whatever be

its other qualities, does not lack for variety. We had first the roseate reports of the early explorers, the Marco Polos and De Sotos, of this hitherto undiscovered country. Then followed the anathemas of the Inquisition of mechanical and engineering experts. This early period of strife was not fruitless, for despite its failure to issue in agreement as to the main question, the mutual criticism of the contestants eliminated certain crudities of statistical comparison which had characterized both parties at the outset. The evidence was next overhauled by such higher critics as the expert accountants, whose verdicts when made public (for in many cases these examinations were made for private parties) failed to arbitrate the moot points to the satisfaction of both parties. Finally the government, and in particular the federal government, has undertaken comprehensive surveys of the field, particularly in the Fourteenth Annual Report of the Commissioner of Labor (1899) upon Water, Gas, and Electric Light Plants, and in the Special Reports just issued by the Census Bureau on Central Electric Light and Power Stations and on Street and Electric Railways.

Commissioner Wright, in the Preface to his Report of 1899, while conceding that it does not settle conclusively the merits of the two systems of management—private and municipal—remarks significantly that the "facts disclosed" are "indicative, and strongly so." I think I should not be unwilling to expend more time than I already have upon the brave columnar array of figures with which the Report is crammed if I felt sure that—once through the statistical morass—my feet would eventually rest upon solid ground. But the pledge of secrecy under which the data were gathered makes concrete verification in the case of individual plants impossible. Moreover, in this statistical slough of despond I have been mocked by certain worldly wisemen, in particular by two competent expert enquirers, one favoring and the other opposed to municipalization, who assure me that the absence of uniform and adequate accounting systems in plants, public and private, makes results based on this jumble of data meaningless. The recent Bulletins of the Census Bureau are, in

many respects, informing and excellent, but even the experts by whom the Bulletins were compiled would, I feel sure, not claim that the facts disclosed or illuminated by their researches settle even remotely the disputed question of public versus private management.

Finally, if further proof were required of the absence at present of satisfactory evidence in this matter, the recent resolution of the National Civic Federation to prosecute, both in this country and abroad, a detailed and thorough-going investigation into the subject may well be cited. This, or some future inquiry, may establish the general financial success of municipal trading; but the character of the testimony at bar at present will justify no other than the Scotch verdict, "not proven."

But while the evidence at hand is inconclusive on the main issue, it is instructive and enlightening in important details. If I ventured to summarize a few of the points which seem to me least disputable I should recite the following:

1. Salaries for superintendence and managerial service, no less than the opportunities offered for professional advancement, are less under municipal management than under corporate management. This, in my judgment, tells against the economy of municipal operation. The higher pay which induces the Panama engineer to leave the government service for that of a private corporation, and the higher salary which attracts the master mind in the Glasgow transit system to Mr. Yerkes's employ, are not paid for sentimental reasons. But public opinion will not, as yet, sanction the payment of similar sums to engineers on the public pay-roll.

2. Wages per unit of labor performed are greater under municipal than under corporate management—a point which, however gratifying in other respects, makes against economy of municipal management. Seeming exceptions to this rule, as well as to the point first cited, are well explained in the recent Bulletin on Central Electric Lighting Stations.

3. Municipalities commonly borrow at rates slightly less than corporations can. But the reports of 635 municipal electric stations in this country show that their bonds bear on the

average 4.5 per cent interest, whereas 795 private electric corporations reported an average of only 4.8 per cent interest on their bonds. Moreover, city bonds sold to equip public plants offer future taxes as a practical security, whereas corporate bonds rest solely on the property, the plant, and the prospects of the corporate enterprise.

4. The comparative cost of supplies, all things considered, is indeterminate. Standardized data are not as yet available to settle the matter.

5. Comparative prices for service, municipal and private, are, all things considered, indeterminate. I know that this will be challenged, but it is well to insist that any price comparison which is worth while is a very complicated operation. My opponent, in his recent book, cites the average price charged by municipal gas plants in England as six cents per thousand feet less than the price set by private companies. But such an average *per se* is little more than meaningless until collateral evidence is scrutinized bearing on the average density of population served, the average price of coal, and many other factors.

Hitherto our argument has been wholly based on economic grounds, and has issued in wholly negative conclusions. That many municipalities in this country are likely to experiment with public ownership and operation there can be no doubt. That compromise devices may be hit upon, like the public ownership of the subways in New York and Boston, with corporate operation, which will afford the maximum public benefit attainable, is not at all unlikely. Our duty as economists is discharged when we give a true picture of results already attained and of the future risks involved. But if we may for a moment venture upon the province of politics, let us ask if there is no hopeful alternative to this plan of municipal ownership and operation for which the outlook on purely economic grounds is so sombre. If it were desired merely to prevent the corrupt disposal of franchises by the city legislature, even so crude a measure as the Cantor Act would suffice. This would auction off franchises, prescribing a certain minimum percentage of the gross receipts as the price to be paid by the

company. But the possibilities of an enlightened franchise policy under an honest and capable city government go far beyond the prevention of the more flagrant forms of defrauding the city. I think there is good ground to believe that such a city government could by franchise provisions shrewdly drawn secure from public-service corporations, either in taxes or in abatement of prices, a return commensurate with the fair value of the franchise grant, and could secure at the same time adequate service at a price that would yield nothing more than a fair profit to the companies. I venture to rest my hope on two facts: first, on the fact that there is no necessary or causal connection between corporate operation under franchise and civic corruption. Those who ask us continually to admit the facts connected with British experience may well be faced with the question whether corporate corruption of city politics is found in those cities in Great Britain which do *not* have municipal trading? Is there any evidence that Darwin's statement is not true that "the corrupt influence of private companies on municipal governments is rarely exercised on this side of the Atlantic" (p. 132). My belief rests, in the second place, on the enlarged measure of success that has attended various efforts in this country to obtain more adequate compensation for franchise privileges, and more effective guarantees of efficient service. However much remains to be secured, there has been encouraging progress in this direction.

My opponent insists that an economic change in the direction of municipalization is the key to the purification of our politics. As a student of politics he finds the remedy for civic ills in an economic upheaval. In opposition to this claim I insist that the cure for our economic ills is to be found primarily in political reform. As I view the matter, there is no escape under a representative government from reposing responsibility in some person or persons. Let political responsibility be undivided, and let it be located so clearly that concealment is impossible; let the task of cashiering the dishonest or the incapable administrator or legislator be stripped of all indirection or subterfuge, and reduced to the greatest simplicity possible, by a radical cut in the number of elective

officials—and the question of municipalization or a franchise policy becomes the comparatively simple question of the relative advantages of widening public control or of enlarging governmental administration.

DISCUSSION.

PROF. L. S. ROWE:

I wish first to express a sense of personal obligation, both to Mr. Howe and Professor Daniels, for the admirable presentation of the two elements which are fundamental to any discussion of municipal ownership. The hopeless confusion of the political and the economic points of view has heretofore obscured the real issues involved.

After hearing these two papers, one cannot help but feel that instead of presenting the case for and against municipal ownership, they really contain an analysis of different aspects of the same problem.

Mr. Howe has given us an admirable presentation of the evils traceable to the influence of public service corporations on the civic life of our American communities. With all that he has to say on this point I must heartily agree. Furthermore, his discussion of the social aspects of the problem, of the influence of the transportation and lighting services on standards of life and social well-being of the community, is of vital importance. In fact, we have just begun to appreciate the real significance of a fundamental policy that keeps these ends in view.

I make this statement by way of preface in order to emphasize the fact that what I shall have to say is intended merely to supplement the discussion.

At the outset of this discussion it is important to bear in mind that in the larger cities of the United States municipal ownership of the more important public utilities is a practical impossibility. The constitutional restrictions on local indebtedness close the door to condemnation proceedings for the purchase of street railways, gas or electric light plants. The difficulties of the situation have been greatly increased by the fact that so many perpetual franchise grants have been made.

Where the grants are not perpetual, the situation is so uncertain that endless litigation would precede municipal ownership even if the city were financially able to take over the plant. How can New York hope to take over the transportation system with its enormous capitalization? Or again, how will it be possible to take over the gas and electric light works with their two hundred and fifty millions of capitalization? Philadelphia, which still owns its gas works, will probably be unable to terminate the lease in 1907, owing to the fact that the city has almost reached its constitutional debt limit.

It will require many years to convince the American people that the constitutional limitations on municipal borrowing power no longer serve the purpose for which they were originally intended, but even threaten to become obstacles to further progress.

Were all these difficulties eliminated, the question would still present itself, whether there is any assurance that the transportation, gas or electric light service will be as efficient under municipal as under private management. However strong the indictment against American public service corporations may be, especially in their influence upon the civic life of our larger cities, every one will agree that they have shown a readiness to make improvements in equipment and motive power which has inspired the respect and even aroused the admiration of unbiased foreign observers. These changes often involved a considerable sacrifice of invested capital, but no hesitancy has been shown whenever an ultimate economy in operating expenses could thereby be effected.

It is open to serious question whether, with our present methods of municipal finance, the improvements in the street railway service would have been made with anything like the same rapidity under municipal control as under private management.

Our limited experience with public management has shown that municipal industries are constantly subjected to the danger of deterioration consequent upon the failure adequately to provide for their maintenance and improvement. The desire of the city council to make a "good showing" means that

each year must show a handsome profit, even if this profit is secured at the expense of the technical equipment of the works. Every councilman knows that to the taxpayer of our American communities the tax rate is the test of good government. If the tax rate is low, no matter how inefficient municipal services may be, the government is regarded as satisfactory. Political leaders are aware that an attempt to increase the rate is almost certain political suicide. Every possible device is used to create the impression that taxes are relatively low. Municipal enterprises, whatever their character, are expected to contribute their share toward reducing taxation; indeed the pressure on the city authorities is usually so great that where no net profits are forthcoming the accounts are so manipulated as to show fictitious profits. If there is the slightest danger of an increase in the tax rate the temptation of the council to use for general city purposes the amounts that should be assigned to renewal, repairs, and depreciation is irresistible. The history of the Philadelphia gas works is a striking example of the dangers involved in this attitude of the council. The condition of the gas works at the close of the period of municipal operation was not due so much to technical mismanagement as to the failure of the council to make proper provision for repair and renewal.

Furthermore, in the management of an industry which is undergoing such rapid changes as the transportation system and the gas and electric light service, the public authorities must be prepared at any time to make a complete change in equipment, involving the destruction of a large amount of invested capital. An elective council, subject to the constant pressure of the taxpayer, must be prepared to bear all the criticism and assume all the responsibility for an increase in the city's indebtedness and a corresponding rise in interest and liquidation charges. Although these changes involve not only an improvement in service but an ultimate economy in operating expense, the immediate responsibility falls on councilmen elected for one or two years during whose term none of the economies will appear. They stand, therefore, under the cloud of this large expenditure without the effect of a corresponding benefit.

We can have no assurance of efficient management of public industries until our system of municipal finance has been made more elastic. Furthermore, the taxpayer must be made to appreciate the necessity of being guided by the same business principles in the technical management of municipal industries as in those managed by private companies. Until this change is made we must squarely face the fact that both the efficiency of service and the rate of improvement will be considerably less satisfactory under municipal management than under our present system.

If, therefore, the American people decide to embark upon municipal operation of public utilities, they do so with a clear appreciation of the requisites for success. Failure to observe the fundamental principles of business management will not only lead to financial disaster, but to irreparable injury to the progressive development of our city life.

JOHN A. FAIRLIE: Mr. Howe's paper begins by announcing his belief that the problems of municipal government are primarily economic, while the bulk of his discussion is on the political aspects. He sets forth municipal ownership as a problem of national politics, whereas it has been the belief of reformers that municipal government should be kept, so far as possible, distinct from the national.

I mistrust Mr. Howe's belief that municipal ownership offers something like a panacea for municipal corruption. Evils do exist and certain capitalistic classes gain control over the city government; class rule always will be a democracy's danger. Municipal ownership may eliminate part of this danger, but, it seems to me, it will rather increase the danger from other classes. For these reasons the political discussion does not carry the full weight that Mr. Howe would give it.

The figures that Mr. Howe presents on the economic question should be analyzed more carefully. It is important to know whether the cost is to be paid out of earnings or by taxpayers. My own investigation leads me to the conclusion that in most cases the cities have been moderately successful. I

find very few cases where successes have been very marked or where there have been any serious failures.

I find myself in accord with what I take to be the main conclusion of Professor Daniel's' paper — "not proven." But on one or two points his attitude is more averse to municipal ownership than my own. The fact that the proposed municipal industries are not in accord with the historic activities of municipal government is a matter of interest, but the conclusion is not very important either way. The proposed municipal problems are, however, in accord with what were the oldest municipal functions. The old municipalities interested themselves in markets, docks, and wharves, and even their courts were self-sustaining institutions.

The interest paid by the municipality on bonds represents the whole return of the capital; the bond interest paid by the private company, part of the return. The question is: "What is the difference between the whole return under private and municipal ownership? And here we are again forced to give the verdict "not proven." Until the private corporations get their accounts into such shape that we can know what they invest, we cannot be in a position to compare the results of city management with private management. My own feeling is that the difference is rather more than Professor Daniels pointed out.

The practical issue for the future is between publicly controlled private management, and a limited sort of municipal ownership. Municipalities have not the funds in hand. Cities ought not to be authorized to borrow at the expense of the taxpayers, but they ought to be authorized to borrow in the same way the private corporations borrow, by issuing bonds on the proposed works. If the city government is in bad hands it will find difficulty in floating bonds of this kind; if its management fails, the bondholders will step in and take possession and the municipal management will cease. My own position is that it would be worth while for some cities to experiment in that way. Until we have further experimentation we cannot make any dogmatic assertion either in favor of or against municipal ownership.

MILO R. MALTBIE: The point has been made, regarding municipal ownership in Great Britain, that the depreciation charge of one-half, or at the most one per cent, is entirely too low.

After paying operating expenses, fixed charges, etc. (and with one exception the plants in Great Britain pay taxes), the municipal plants provide for a sinking fund. The figures for depreciation tell only half the story. For if you provide a sinking fund which will pay off the bonds, about the time that the purpose for which these bonds have been issued is out of use you have met every necessity of the case. What reason is there for a depreciation charge in addition? But a great many plants do carry a one-half or one per cent depreciation fund to be upon the safe side.

There are two or three reasons why public supervision is not likely to bring about the results sometimes claimed. You are dealing with industries that are not competitive. There are hardly more than ten or fifteen cities in the United States in which there are more than one gas works, and in these cities there is not genuine competition because these companies have districted the city. The same is true in the case of electric lighting plants. In the case of street railways there are generally more companies than one to a city.

New York is witnessing how monopoly is supplanting competition all along the line. Our surface roads, elevated roads, underground roads, are in control of one group of men, utterly removing, therefore, competition in that field. At present our gas and electric light plants—two industries which ordinarily are competitive—are under one control; there is no competition between gas and electricity. This is the general condition we must face.

Can this difficulty be met by the franchise policy? This policy is based upon the theory of competition. A franchise is put up at auction, and the man bidding highest gets it.

The experience under this policy in New York showed that when two companies competed for a certain franchise in another part of the city, they began with certain amounts and ran up until they reached 100 per cent of the gross receipts;

this was not satisfactory; then they ran up to several hundreds; the matter was carried to the courts, and the courts said you cannot pay more than 100 per cent, so the man who first bid 100 per cent got the franchise. Did he build the road? No. The franchise was laid away in his vaults, and he did not operate under it for years after; then he made an arrangement with the city whereby a certain percentage was paid.

If an important franchise right in the heart of the city of New York, the one big thoroughfare near Broadway that can be used by a street railway, were put up to-day, who would bid for it? It can be of no use to an independent company; consequently the only persons interested enough to pay anything for it is the collection of individuals that now controls the entire transit situation on Manhattan Island, giving just what they please.

Now suppose we have supervision and regulation. How are we to compel the company to come to our terms? The best system of regulation that has yet been provided (that in England in the gas works) provides for a limited dividend at a limited price, and an increase of the dividend as the price decreases. That works well in the beginning, but after one generation has passed the industry has been revolutionized, and the terms are unsuited to the new conditions.

They tried in Toronto what they thought an excellent system of franchises. With what result? Litigation from the time it was put in force to the present time, and yet they cannot make the companies live up to requirements.

The system of public regulation opens these difficulties. You must take just what the companies will give, or fight them in the courts year after year.

J. Dorsey Forrest: Like Professor Daniels, I think it very desirable not to introduce a quibble on the distinction between municipal ownership and municipal management; yet the distinction may sometimes be quite important. When we are aiming at municipal ownership and management, we desire two things: one to conserve to the public the unearned increment of the franchise which is granted, the other to obtain

good service. In almost all cases of American municipal management which have been commended, we find that the enterprises are of a character to require but little management; that is, we find that municipal ownership in these cases obtains for the city the value of the franchise, but does not entail a kind of management which our cities are not, at present, adapted to exercise. Professor Daniels referred to the Cincinnati Southern Railway, which presents none of the problems involved in our discussion. The same may be said of dock properties and market houses. These run themselves. They are very much simpler of management than gas and electric light plants or street railways. If we can obtain the results aimed at by those who advocate municipal ownership, without burdening our public authorities with tasks for which they are not at present well fitted, the whole point will be gained.

Some seventeen years ago, the Indianapolis Gas Company had obtained certain natural gas rights and had brought the gas down to the city. It then attempted to hold the city up for a higher rate than that authorized in the franchise already granted. Public indignation was such that it was possible to finance and put into operation a popular company which agreed, among other things, to operate at a maximum of eight per cent. on the investment; and, after returning the principal invested by private capital to the owners of that capital, to furnish gas at cost. About the time that the principal was returned to the investors, natural gas failed; and thus the experiment did not receive a complete trial. Nevertheless, the amount saved to the consumers by this independent company was several millions of dollars; and on the financial side the enterprise was abundantly successful. The full eight per cent. dividends were paid; the par of the stock was returned in full; since the company has been put into liquidation, the stock-holders have received a dividend of forty per cent.; and they will receive an additional dividend of fifty or sixty per cent. within the next few months. On account of a technical error in the original charter of the company, the courts restrained it from supplying artificial gas at cost (as its directors desired to do), and ordered it to wind up its affairs.

Since that decision, certain public-spirited men in Indianapolis have formed a new corporation to take over the property under an option held by the city and transferred to this new company. The franchise granted to these men provided for an operating company which will acquire the existing pipelines, construct a modern plant, supply gas of high heat units but low candle-power at sixty cents per thousand cubic feet, pay a maximum dividend of ten per cent., return the part of the stock to the investors, and then transfer the whole system to the city. It may then be leased or directly operated, as conditions justify. Barring certain improbable court decisions, these results will surely be accomplished. Both the franchise and a valuable plant will revert to the city. Meanwhile, the consumers will receive cheap gas; and many small investors—who will be consumers—will have an opportunity to make a profitable investment.

ALBERT SHAW: I have never been an advocate of municipal ownership (though sometimes quoted as being one), and I have never been an opponent. In Germany, where municipal government is competent, it is a matter of almost absolute indifference. The municipal government is such that it matters very little whether a private company puts up the capital and goes through the experimental stages of development of plants or whether the city itself is willing to finance the undertaking. There is competent engineering talent available in either case as well as sound business management. It is, however, always advantageous to have the opportunity of recourse from one method to another. It simply is a question whether or not under local circumstances it is better to grant to private or municipal management. In either case you are probably going to have an efficient situation in which no one forgets that the municipality will aim to dominate its public service.

In England it seems to me the financial discussion at the present time of what is called municipal trading is a little to one side of the real situation. The English cities have got to be studied historically. They had fallen into a frightful state of unsanitation. It was the death-rate and the horrid condi-

tion of women and children, inadequate homes, the wretched condition of slumdom that England and Scotland confronted.

Good and capable and practical, but not imaginative, business men took hold of the matter. They wrought under the direction of health officials. Municipal water became a health necessity. The supply of light deserved consideration. The communities determined to regenerate themselves. In that process of regeneration they resorted very largely to municipal ownership of lighting plants with success.

In our country we are confronted with such facts as Mr. Howe set forth—the tying up and domination of our municipal corporations by immensely powerful private companies. Charter limitations have been created which embarrass municipalities in their attempt to render to the community ordinary and necessary functions. And now there is a rebellion to emancipate the municipal corporation and to give it a chance to do what it desires to do for the welfare of its people. The people of this country are gradually determining that the municipal corporation must at least dominate its own services, whether through the supervision or control of private companies held well in check, chartered in order to render public services belonging to the people, or whether the people are to find that, in order to maintain favorable conditions, they must undertake these things directly. We are in a seething process of experiment from one end of the country to the other. I wish these experiments good luck. I know that experiments here and there honestly conducted by efficient men are bound to act favorably upon public opinion.

JEREMIAH W. JENKS: Personally I welcome the tendency toward municipal ownership and operation, but largely for the reason that Dr. Shaw has just given. It is extremely important that we have much more experimental knowledge than now. We can get that knowledge best through having a good many of our municipalities in different situations make the attempt. The political and economic conditions in different cities are so varied that in some cases municipal ownership and operation may be successful, in others it is likely to prove a

failure. From experiments made in different places we shall learn what conditions will produce successful ownership and operation and what will lead to failure.

It seems to be the assumption on the part of most people who favor municipal ownership that thereby we shall very largely escape political corruption. But the question of political corruption is a matter of human nature rather than of form of government. The people who take the lead in politics and in business, the dominating personalities, are few. Most of us are mere followers. The very strong men now are largely in the employ of our so-called municipal monopolies. It is not going to change the personnel very much if we adopt municipal ownership. We shall have the same men as leaders. The people who are dominating now are going to dominate then, and if their interests and motives are selfish then as they are now, we shall have the municipality through its government used for the benefit of private individuals as now it is used by private corporations. We should always try to get the dominating personalities working in the interest of the public, but we are not to assume that they will do so simply because we put them into office. We have sometimes had them when holding office using the funds of the treasury for their own private interests. We should see to it that the public in general knows its own interests, its own wishes so well that it shall compel these dominating personalities, whether in the employ of the city or of a private corporation, to work in the interest of the public.

RICHARD T. ELY: I want to call attention to the difficulties in the way of control which are of a personal nature. In some respects control is easier in a large city than in a small city; in other respects more difficult. Now what does control mean? In a city of twenty-five thousand inhabitants, for example a city like the one in which I now live, Madison, let us suppose I want to take an active part in municipal government, and that we have a private electric lighting plant or gas company which is to be controlled. The electric lighting plant is not merely an impersonal thing. We say "a plant,"

"a company," "a corporation," but it may mean that I am to put myself against a man who sits opposite me in church, who has been very kind to me, perhaps is the god-father of my little boy. Now it is easy to say you must not have any regard to personal considerations; you must fight your own father or your father-in-law, your brother or your brother-in-law. But this means engaging in perpetual controversy with people among whom you live, with whom you are thrown, upon whom you are dependent. It is rather serious when you put it that way. I do not say you should not do it, I do not say we should not all be of heroic mold.

Now you may say if it is proposed to municipalize one of these plants, you must also engage in controversy with personal friends. If it is a question of purchase, it is a fight. It is a test once for all. I take off my coat and fight with my friends for six months. The relations may be strained, but afterwards we hope we can restore them.

But when it comes to control, day after day, year after year, to be engaged in controversy with men with whom you have ties of all sorts, it is a serious matter. In larger cities such questions have a less personal nature (I do not say they have none) than in cities of smaller size. I would like people to think what control means, not in the abstract alone, but in the concrete.

F. B. Thurber: There are two sides to most questions, and municipal ownership is no exception to this. There are situations in countries having a different form of government from ours where graft is not an epidemic disease, and where public ownership and operation may be successful, but even there opinions differ. In Great Britain it has run its course, and there is a reaction in public opinion against municipal trading, as it is called there, just at a time when many well-meaning persons in this country, as well as the professional socialists and the yellow journals, are advocating it here.

In a country with universal suffrage it is desirable to limit the number of public officials to the smallest possible number for political reasons; and there are also economic reasons

which apply especially to lighting, traction, and other public service corporations which are large buyers of materials, employ large numbers of persons, and require a high order of administrative ability; indeed water, a natural product, which runs down hill and is distributed with a minimum of labor and expense, is about the only public necessity justifying public ownership in this country, and even in this there are exceptions.

Nothing can be truer as a rule than that "public ownership waste exceeds corporate profit;" supplement this with the even more important political consideration, and thoughtful citizens may well hesitate to favor the present socialistic fad of municipal ownership. Of course, its advocates play upon prejudice and claim economies for public ownership which do not exist.

Public officials where municipal plants have been established are naturally interested in making a good showing and holding their easy jobs; in many instances their bookkeeping omits interest, taxes, depreciation, sinking fund for renewals or improvements, and other items which a private corporation must recognize. The taxpayer is a convenient beast of burden upon which to unload deficits, and he in turn unloads it on rent-payers where he can. Under public ownership new inventions, improvements, and extensions are ignored. Under private ownership the best professional talent is employed at salaries unheard of in public employment, and all these improvements are at once utilized, giving the public an up-to-date service.

Individual initiative and energy, coupled with the co-operation of many small partners in corporations, has made this country great, and I cannot believe that the socialistic propaganda will prevail if the facts are properly presented to the jury of American public opinion.

THE CABINET AND CONGRESS: AN HISTORICAL INQUIRY.

BY MISS MARY L. HINSDALE,

RADCLIFFE COLLEGE.

A noted writer on political subjects, Woodrow Wilson, says in his *Congressional Government:*[1] "Before the Republican reaction which followed the supremacy of the Federalists, the heads of the departments appeared in person before the Houses to impart desired information, and to make what suggestions they might have to venture, just as the President appeared in person to read his 'address.'" This statement is one of a large number afloat, which assume that executive officers at one time enjoyed the privilege of speaking on the floors of Congress. Inasmuch as the basis of this impression is a few occurrences indistinctly recorded and still more vaguely cited, it may be worth while to discover from the sources whether they bear out any such view of the early practices of the government.

The occurrences which give color to such an impression may be divided into two groups. Into the first fall three transactions, in which there is no doubt that certain high Executive officers participated in person. The second includes a class of events, of which there are at least twenty, where the real significance of the thing that happened is not so clear on the surface.

Of the first series of these events, the earliest is an appointment[2] to diplomatic office. On June 16, 1789, John Jay, who was acting as Secretary of Foreign Affairs, under appointment by the old Congress, appeared in the Senate to deliver a message from President Washington, nominating William Short to take charge of the affairs of the United States at the

[1] Page 257.

[2] *Executive Journal of the Senate*, vol. 1, p. 6. *Journal of William Maclay*, p. 78.

court of France during the absence of Thomas Jefferson. As the message stated that Mr. Jay had orders from the President to lay before the Senate, at such time as that body should order, certain papers in the office of Foreign Affairs which bore upon the subject, an order was passed that this should be done at twelve o'clock on the following day. Accordingly, Mr. Jay appeared before the Senate on June 17, and gave information bearing upon the appointment. On this date the Senate, of its own accord, enlisted the services of the Secretary of Foreign Affairs in the second of the transactions in which an Executive officer participated in person. The subject of this was a consular convention [3] with France. The Senate ordered that Mr. Jay lay before their body whatever official papers and information he might possess relating to the matter. More than a month later, July 21, this action was followed up by an order that the Secretary of Foreign Affairs be requested to attend the Senate the following day at twelve o'clock, and to bring with him such papers as are requisite to give full information relative to the consular convention between France and the United States. Agreeably to this, Secretary Jay waited upon the Senate on July 22, and gave information as was desired. The third occurrence of this group, which is the most familiar of all, is the visit [4] paid by President Washington and Secretary Knox to the Senate Chamber, for the purpose of discussing the terms of a treaty with the Creek Indians. The dry facts of this episode, which is worn quite threadbare by much quoting, are that on August 21, 1789, the President sent to the Senate a notice that he would meet them, at a stated hour on the following day, to advise with them on the terms of a treaty under negotiation with the southern Indians. Accordingly, on Saturday, August 22, he appeared, announcing that he had brought with him his Secretary of War to give every necessary information. However, the business lagged so much that it was put over until the next meeting. On Monday, the 24th, the President and Secretary again appeared, and on this occasion there was less

[3] *Executive Journal of the Senate*, vol. 1, p. 7.

[4] *Executive Journal of the Senate*, vol. 1, pp. 20, 23.

awkwardness and delay in the proceedings. These sessions of August 22 and 24, 1789, are the only times when any President has sat in council with the official Senate. However, the notion that Washington felt so chilled by the manner of his reception that he abandoned all such procedure is not well founded. Senator Maclay [5] gives such an impression in his diary, but he looked on everything that he saw at New York and Philadelphia with a jaundiced eye. Moreover, the President's later course [6] does not bear it out. On August 4, 1790, he sent to the Senate a message, communicating the draft of a secret article to be incorporated in a treaty with an Indian tribe, which closed with the words: "If the Senate should require any further explanation, the Secretary of War will attend them for that purpose." It is clear that he still held the opinion that such was a proper method of transacting business. However, the Senate promptly agreed to the proposed article, without calling for further explanation.

With regard to this group of occurrences, it should be noticed that it was in every instance an executive session of the Senate, in which the Heads of Departments participated. The matter of business was in one case an appointment to diplomatic office, and in each of the others a treaty. All these events might lead to speculation as to what executive powers the Senate might have developed out of its constitutional right to give advice and consent on these two subjects, if only its members had appreciated their opportunity, while as yet the President had no Cabinet; but they afford no precedent for admitting Executive officers to the proceedings of Congress as a Legislature.

The second and more doubtful group [7] of these occurrences includes ten cases in which Secretary Knox waited upon the Senate, and eight in which he waited upon the House of Representatives; also two cases in which Secretary Jay waited upon the Senate. In each of these it can be shown that the Executive officer figured only as a messenger. The usual lan-

[5] *Journal of William Maclay*, pp. 128-132.

[6] *Executive Journal of the Senate*, vol. I, p. 55.

[7] See list at close.

guage of the *Annals of Congress* in recording them is simply: "A message was received by hand of Henry Knox, Secretary of War," or "The following communication from the President was received by Secretary Knox." The significance of these events is at once suggested by certain passages in Maclay's diary, wherein it appears that forms and ceremonies occasioned a good deal of anxiety in the days before the new government began to feel at ease with itself. Vice-President Adams is here recorded[8] as saying in the Senate: "There are three ways, gentlemen, in which the President may communicate with us. One is personally. . . The second is by a minister of state. The third is by his chamberlain, or one of his aides-de-camp I had almost said, but that is a military phrase." In actual practice the Secretary of War shared for a little while with the President's private secretary the duty of conveying messages, the Secretary of Foreign Affairs serving twice in the same capacity. To quote Maclay again:[9] "Mr. Lear has for two days past been introduced quite up to the Vice-President's table to deliver messages. . . . There was some talk about it a few days ago; but I understood the sense of the Senate to be that the Head of a Department, if he came to deliver a message from the President, should be admitted to the table; but a private secretary received at the bar."

However, the interpretation of these events should be based upon more precise records than the diarist's. Construed from the language of the *Annals of Congress*, two of the visits of Secretary Knox to the House of Representatives have been held by most respectable but uninformed authority to show an actual participation in the proceedings. According to the *Annals*, the Secretary delivered to the House on August 7, 1789,[10] a message from the President, together with "sundry statements and papers relating to the same;" and on August 10[11] he delivered a message, "together with a statement of the troops in the service of the United States." What were

[8] *Journal of William Maclay*, p. 21.

[9] *Journal of William Maclay*, p. 127.

[10] *Annals of Congress*, vol. 1, p. 684.

[11] *Annals of Congress*, vol. 1, p. 689.

these all-important "statements?" If the language of the *Annals* is indecisive, the *Journal of the House of Representatives* shows that they were not oral communications. Under date of August 7, the *Journal* [12] says: "A message in writing was received from the President of the United States, by General Knox, who delivered therewith sundry statements and papers relating to the same, and then withdrew. The message was then read," etc. For August 10,[13] the *Journal* runs: "A message from the President, in writing by General Knox, who delivered the same, together with a statement of the troops in the service of the United States; and then he withdrew." This statement of the troops appears in full in the *Journals of Congress*, and includes such details of organization, distribution, wages, clothing, and rations as the Senators would hardly have listened to. In every instance the language of the *Journals* shows conclusively that this class of visits paid by two of the Heads of Departments to the Houses of Congress had no more parliamentary significance than those of Tobias Lear, the President's private secretary.

It is an important fact, moreover, that the Executive officer who figures in all of these events, with only two exceptions, which have no significance, is Knox, the Secretary who had the least influence and the least concern in legislation. The notion that Jefferson, as Secretary of State, sometimes communicated with Congress in person is an error, springing in part from the supposition that, when the Senate summoned the Secretary of Foreign Affairs, July 21, 1789, he was the incumbent of that office; but in reality it was March of the following year when Jefferson assumed his secretaryship. This mistake has also arisen from a wrong interpretation of an entry [14] in Maclay's diary, May 24, 1790, where it is plainly shown that the Secretary of State met a select committee of the Senate, in the hall used by that body, while it was not in session.

However conclusive the proof that Congress did not admit

[12] *Journal of the House of Representatives*, First Session, p. 92.

[13] *Journal of the House of Representatives*, First Session, p. 96.

[14] *Journal of William Maclay*, p. 272.

the heads of departments to its debates during the formative period of the government, it cannot be denied that it countenanced the principle involved, by passing the act to establish the Treasury Department, September 2, 1789. As is well known, this act includes a provision that the Secretary of the Treasury "shall make report and give information to either branch of the Legislature, in writing or in person, as may be required." There is no reason to suppose that the members of the First Congress saw in this any violation of that clause of the Constitution which enjoins that "no person holding any office under the United States shall be a member of either House during his continuance in office." It is true that the new Executive was regarded with suspicion, so much so that James Madison,[15] the leader of the House of Representatives, referring to the opposition which the attempt to secure the power of removal to the President alone was encountering, expressed the fear that the Executive would be the weak branch of the government. Moreover, the general impression of direct intercourse between the Executive and the Legislature was that it would be abused by the former power. Nevertheless, so far as the writer of this paper has been able to discover, the provision that the head of the Treasury Department might report in person, if so ordered, was not attacked in debate. Whether it was that attention was diverted from it by the onslaught against the provision that the Secretary of the Treasury should digest and report plans for the improvement of the revenue, and for the support of the public credit, wherein the constitutional right of the Lower House to originate money bills was supposed to be threatened, or whether the Executive interest was strengthened for a new victory by the triumph it had lately scored, under Madison's leadership, on the subject of removals, the principle of direct intercourse had an easy triumph. On the day when this section of the bill was voted upon, June 25, Fisher Ames[16] wrote to one of his political friends: "A puerile debate arose, whether the Secretary of the Treasury should be allowed to

[15] *Works*, vol. 1, p. 372 (ed. 1900).

[16] *Works*, vol. 1, p. 56.

exhibit his reports and statements to the Legislature. The champions of liberty drew their swords, talked blank verse about Treasury influence, a ministry, violation of the privileges of the House by giving him a hearing from time to time. They persevered so long and furiously that they lost all strength, and were left in a very small minority. The clause permitting this liberty passed." The only result of this debate was to change the words "digest and report" to "digest and prepare."

Everybody knows that, notwithstanding this provision, looking to direct communication between Congress and the Treasury, no Secretary of the Treasury has ever reported to Congress in person. Many persons suppose that jealousy of the powers of the Department caused the provision to be a dead letter from the beginning. What are the ascertainable facts about the matter? The House of Representatives, shortly before the adjournment of its first session, passed a resolution [17] that the Secretary of the Treasury be directed to prepare a plan for the support of the public credit, and report the same at its next meeting. At the opening of the second session, the Speaker communicated a letter announcing that the Secretary of the Treasury was ready. Gerry, of Massachusetts, moved that the report be submitted in writing; but of the five members recorded as taking part in the debate,[18] Clymer, of Pennsylvania, was the only one who expressed doubts as to the propriety of oral communication from so great an officer. Fisher Ames, the consistent friend of the Executive, thought that this particular report ought to be in writing; because the more permanent form was more likely to insure the responsibility of the Secretary, while at the same time it would be less liable to be misunderstood. This latter point was elaborated by Gerry in a closing speech. In a plan for supporting public credit, might be comprehended every species of finance. Could the human mind retain with any degree of precision objects so extensive and multifarious

[17] *Annals*, vol. 1, p. 904.

[18] *Annals*, vol. 1, pp. 1043-1045.

upon a mere oral communication? These considerations alone ought to be sufficient to induce gentlemen to agree to his proposition of making the report in writing. With this it was decided that the first of Hamilton's great reports should be submitted in writing.

It seems, from the foregoing facts, that the First Congress did not directly face the question of personal communication with the heads of departments in any of its debates. But the Second one met it squarely in a series of discussions that occurred on November 13, 14, 19, and 20, 1792. Inasmuch as it was the action taken on this occasion that has settled the practice of the government on this point, down to the present time, it is surprising that these debates[19] have received so little notice. On November 13, 1792, while the House of Representatives was investigating the defeat of St. Clair's Indian expedition, the following resolution was introduced: "That the Secretary of the Treasury and the Secretary of War be notified that this House intend, on Wednesday next, to take into consideration the report of the committee appointed to inquire into the causes of the failure of the late expedition under General St. Clair, to the end that they may attend the House and furnish such information as may be conducive to the due investigation of the matters stated in the said report." Eleven members spoke against the resolution, and six in favor of it; and the debate was renewed six days later, November 19, on a resolution to call upon the Secretary of the Treasury to report a plan for the reduction of the public debt, no suggestion that he should come to the House in person being included. In both debates, Madison figured as the leader of the opposition, saying that to summon the two Secretaries would introduce a precedent that would lead to perplexing and embarrassing consequences. Accordingly, he was decidedly in favor of written information. In his remarks against the resolution to call upon the Secretary of the Treasury for a plan to reduce the public debt, he set up a kind of defence for abandoning the role of chief supporter of the administration

[19] *Annals of Congress*, vol. 3, pp. 673-694, 696-701, 703-708, 711-712.

in the Lower House for that of leader of the opposition, by saying that in the infancy of the government it might be necessary to interpret the act establishing the Treasury Department with more latitude than was contemplated when it was passed, but that he could see no necessity for it at present. The reason for Madison's change of front was that he was one of the newly-developed anti-Hamilton party. The policy of the Secretary of the Treasury had by this time forced the issue that differentiated the two great political parties. The opponents of a strong central government were particularly hostile to a strong Executive. This was the reason why the Second Congress was more chary of Executive privileges than the First. In general, the enemies of the Treasury policy opposed the resolution to summon the two Secretaries to the House of Representatives; but there was one notable exception. Elbridge Gerry, who had been the most pronounced enemy of the act to establish the Treasury Department, and an opponent of the proposition to make the heads of departments removable by the President alone, said that he was surprised at the apprehensions that some gentlemen appeared to entertain of the measure to introduce the heads of departments into the House; for his part he had no such fears. The Secretaries would attend at the orders of the House merely to give such information as might be required, and not as members or ministers to influence and govern the determination of the House. The closing words might imply that if the Secretaries were coming as ministers, Mr. Gerry would be opposed to it. But in the debate six days later he made it clear that he did not fear them even in this capacity; for, if the influence of the Secretary was formidable, he conceived that it would be much more dangerous if exerted against a committee than in the whole House. Yet Gerry appears to have been the only man to see that the proposed relation might work to the advantage of the Legislature. The motion to summon the two Secretaries was defeated. Secretary Knox thereupon sent a letter to the House alluding to his anxious expectation of some act which would enable him to attend at the examination upon which they were about to enter. The failure of the proposi-

tion had added to his solicitude. Accordingly, he felt himself called upon to ask of the justice of that body that some mode might be devised whereby he might be present during the inquiry. Nevertheless, the aggrieved Secretary, far from founding any claim upon the fact that he had already visited the House in session eight times, did not even mention it. The only action that the House took was to continue the select committee that had begun the investigation. The resolution to call upon the Secretary of the Treasury for a plan to reduce the public debt was carried.

The foregoing interpretation of these events which occurred in November, 1792, is fully borne out by a letter which Jefferson [20] wrote, December 3, (of that year) to Thomas Pinckney. After congratulations upon the Republican successes in the recent elections for Congress, he says: "They endeavored a few days ago to take away one means of influence by condemning references to the heads of departments. They failed by a majority of five votes. They were more successful in their endeavor to prevent the introduction of a new means of influence, that of admitting the heads of departments to deliberate occasionally in the House in explanation of their measures. The proposition for their admission was rejected by a pretty full vote. I think we may consider the tide of this government as now at the fullest, and that it will, from the commencement of the next session of Congress, retire and subside into the true principles of the Constitution."

The position taken by the Second Congress was much strengthened by the appearance of Albert Gallatin in the House of Representatives in 1795. In a memorandum [21] of his first experience in Congress, Gallatin says that it was his constant effort to keep the Executive within the strict limits of Constitution and of law, and that his first step was to secure a standing committee of Ways and Means.

While Madison was President, a peculiar overture was

[20] *Works*, vol. 6, p. 143 (ed. 1892).

[21] Adams, *Life of Albert Gallatin*, p. 157.

made to him, which has by at least one writer been misconstrued into an invitation to sit with the Senate in council upon foreign affairs. The facts of the matter are as follows: In June, 1813, the President sent to the Senate the nomination of Albert Gallatin, Secretary of the Treasury, to be Envoy Extraordinary to Russia, as a step towards a negotiation to restore peace with England. He also sent the nomination of Jonathan Russell to be Minister to Sweden. The circumstances attending both nominations were so extraordinary that the Senate referred each to a select committee; and after some unsatisfactory correspondence with the Executive, calling for information, it instructed the two committees to confer with the President and to report. The President declined [22] to enter into discussion with either committee, stating his reasons to the Senate in a special message dated July 6.

Once, and apparently only once, during this period was the question of giving the heads of departments a hearing in Congress raised in the National Legislature. John Randolph [23] remarked, April 7, 1806: "I say, I wish the heads of departments had seats on this floor. Were this the case, to one of them I would immediately propound the question: "Did you, or did you not, in your capacity of a public functionary, tell me, in my capacity of a public functionary, that France would not suffer Spain to settle her differences with us?" The immediate purpose of this was the malicious one of alienating Gallatin from the President and Madison, and it was probably as serious as most of Randolph's proposals of improvement in the methods of government. From this time to the Civil War the only references to the subject which have been noticed by the writer of this paper are an allusion made by John Adams [24] in one of his letters to the Boston *Patriot*, 1809; a suggestion jotted down by John Quincy Adams [25] in his *Memoirs*, 1819; and the advocacy of the plan of Joseph

[22] *Executive Journal of the Senate*, vol. 1, pp. 384-385.

[23] *Annals of Congress*, vol. 15, p. 984.

[24] *Works*, vol. 9, p. 272.

[25] *Memoirs of John Quincy Adams*, vol. 4, p. 457.

Story,[26] in his *Commentaries on the Constitution*, which appeared in the form of a book in 1833.

Although the National Government never practiced the system of bringing the Executive into direct contact with the Legislature, the history of the United States affords a fair instance of giving it a trial. The experiment of the Confederate States has such a practical bearing upon the question whether the system is adapted to this country, that it should have received more attention from publicists and legislators. The Provisional Constitution, under which that government was carried on from February 8, 1861, to February 22, 1862, did not, like the Federal Constitution, contain an inhibition on officers of the government serving as members of Congress. It assumed the creation of Executive Departments, and six of these were promptly established by law. As soon as the Congress of Delegates, sitting at Montgomery, had chosen a President, Jefferson Davis, appointments to these offices were made. The Secretary of State, Secretary of the Treasury, and the Postmaster-General were chosen from among the members of Congress, introducing a most novel feature into the political systems of the country; at the same time, the Secretary of War, Secretary of the Navy, and the Attorney-General were chosen from outside of Congress. This distribution of offices was continued throughout the year, although changes were made in the personnel. In May, 1861, when the Congress of Delegates had convened for its second session, another step was taken by passing a resolution[27] to the effect that the members of the Cabinet of the Confederate States, not members of Congress, have the privilege of discussing any measures appertaining to their respective departments.

Thus, the system which was proposed a little later as a reform for the National Government, was in actual operation during three sessions of the Provisional Congress of the Confederate States. However, a complete system of standing

[26] Story, *Commentaries on the Constitution*, sec. 869.

[27] *Journal of the Congress of the Confederate States of America*, vol. 1, p. 182.

committees had been inaugurated before the laws to establish the Executive Departments were passed. Moreover, it does not appear that it was the practice to digest legislation before the whole House, under the leadership of the Cabinet. On the contrary, bills were ordinarily referred to the standing committees in charge of the particular subjects of legislation to which they appertained. When calls were made upon the heads of departments for information, they were answered in writing, and communicated to the Assembly through the Speaker.

The Permanent Constitution was framed during the first session of the Provisional Congress, and was appointed to go into operation early in the following year. This document was modelled after the Constitution of the United States, and includes in its proper connection the provision [28] that the officers of the government shall not serve as members of Congress. However, the following provision is added: "But Congress may, by law, grant to the principal officer in each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing measures appertaining to his Department." This was a distinct withdrawal from the system which the Provisional Constitution made possible, and which President Davis put into partial operation by his appointments. The closer connection between the two branches of government was regarded with favor by such distinguished men as Alexander H. Stephens and Robert Toombs. The *Journal* of the Congress, while sitting as a Constitutional Convention, shows that both of these gentlemen proposed amendments [29] to the clause of the Permanent Constitution which would leave the way open for the development of the parliamentary system. Mr. Stephens [30] says in his *War between the States*, that it was his wish that the President should be required to appoint his Cabinet from members of one or the

[28] *Constitution of the Confederate States of America*, Art. I, section 6, clause 2.

[29] *Journal of the Congress of the Confederate States of America*, vol. 1, p. 863.

[30] Stephens, *War between the States*, vol. 2, p. 338.

other House of Congress, adding that he always regarded this feature of the British Constitution as one of the most salutary principles in it. Considering the circumstances, it is a surprising fact that after the government was organized under the Permanent Constitution no law was ever passed to admit the heads of the Executive Departments to the floors of either House. The power that the Constitution thus permitted was never exercised. Thus the only vestige of the system that remained in the laws, after February, 1862, was in the act establishing the Treasury Department. This measure, like that which was passed by the National Congress in 1789, for the same purpose, provided that the principal officer in that Department might report in person or in writing, as he was directed. However, the *Journals of the Congress* contain no evidence that he ever communicated with that body in person.

The fact that the Congress in which eleven of the Southern States were represented failed to put this expedient into operation, after it had been on trial a year, suggests the thought that there is some obstacle to its success deeply rooted in the institutions of the people. The circumstances could never be more favorable to it in this country. An opportunity was at hand to cut away those parts of the American system which were found to be unsatisfactory, or to uproot it altogether. Moreover, the English system was now seen working in its perfection, if the Southern people wished to copy it. It was also the hour of a great crisis, one of those seasons in which the system that fuses together the leglislative and executive branches of government, operates to the greatest advantage. Although there could be among the people no tradition of political leadership, such as survives the decay of feudal orders, there was a sentiment that bears some resemblance to it which had been fostered by their industrial institutions. But, notwithstanding these favorable conditions, the way for the development of the system was closed up.

The Civil War brought the subject into discussion in the National Congress, where it had hardly ever been mentioned, since that body took a stand against summoning two Secretaries to its floors in 1792. The war made Congress very

dependent upon the Executive Departments, and rendered prompt and coherent legislation necessary. The regular and time-honored method of listening to the Secretaries in the committee-rooms seemed too remote and too uncertain for the crisis of the hour. Hence, George H. Pendleton, then a Representative from Ohio, introduced, February 8, 1864, a resolution "to provide that the heads of Executive Departments may occupy seats on the floor of the House of Representatives." This was referred to a committee of seven members, of which Mr. Pendleton was chairman. From this body was reported a bill in two sections, one of which conferred upon the heads of departments the privilege of attending the sessions of the House for the purpose of participating in the debates upon subjects appropriate to their respective Departments; while the other made it obligatory for them to attend at stated times, for the purpose of giving information in reply to questions that might be propounded. A schedule of changes in the rules of the House, fitting the new procedure into the order of business, was likewise presented.

The committee reported [31] a variety of arguments in favor of the bill, including an appeal to early precedents, a feature which was incorporated in the very form which it now took, into a Senate Report on the same subject some fifteen years later, which will be noticed in its order. The House Report of 1864 dwells upon the necessity of speedy and accurate information: "The exigencies of these times have made members of this Congress so familiar with cases of this nature that the words, 'conscription,' 'legal-tender,' and 'taxation,' recall the painful embarrassments by which their decision was surrounded." The report goes on to assert that the members of the Cabinet already exercise a great influence over the Legislature, and to maintain that this should be open instead of secret. The advantages to be derived from an opportunity for the House to question the heads of departments face to face is illustrated as follows: "If a Secretary of War of a former administration had been on the floor of this House

[31] *House Report 43*, Thirty-eighth Congress, First Session.

during the session of 1860-61, a few questions put and answered in half an hour, on any proper day, would have disclosed a state of affairs in relation to the sale of arms and the removal of guns and ammunition which the Committee on Military Affairs developed after many days, with the aid of sergeant-at-arms, subpœnas, witnesses, and stenographers—too late effectually to prevent the evil."

In the whole history of the subject, no debate in Congress has been so thorough-going. Morrill, of Vermont and S. S. Cox, of Ohio, spoke against the bill; Pendleton and James A. Garfield, in favor of it. Mr. Garfield's speech includes the most careful examination of the attitude of the early government that has ever been presented to Congress, although he fell into several errors through relying exclusively on the *Annals of Congress*. This speech has been cited as an argument for direct contact of heads of departments with Congress, springing from an exceptionally long legislative experience; hence it is well to notice that it was very early in Mr. Garfield's career when it was delivered. It was the fate of the bill to expire with the Congress without coming to a vote.

Fifteen years later Mr. Pendleton, then a member of the Senate, brought up the subject for a second time, in the form of a bill introduced March 26, 1879, modelled after that which he had reported to the House of Representatives in 1864. Like its predecessor, it provided for both voluntary and obligatory attendance. The chief point of difference was that the Senate, as well as the Lower House, was to admit the heads of departments to its floors. This bill was referred to a select committee of ten members, who were George H. Pendleton, W. B. Allison, D. W. Voorhees, James G. Blaine, M. C. Butler, John J. Ingalls, O. H. Platt, Thomas F. Bayard, Roscoe Conkling, and J. G. Farley. From this committee was put forth, almost two years after its appointment, February 4, 1881, a report [32] favoring the direct participation of the heads of Executive Departments in the proceedings of

[32] *Senate Report 837*, Forty-sixth Congress, Third Session.

Congress, and signed by all the members of the committee except Bayard and Conkling. This document has ever since been cited to show the headway which the proposition has made, and its historical portion, in the main restated from the House Report of 1864, has been much quoted as an authoritative statement of a strong argument from early precedents in favor of the plan. Extracts from the *Annals of Congress* were included to show that the proposed expedient would not be a new venture. The instances cited are: (1) the attendance of the Secretary of Foreign Affairs upon the Senate, July 22, 1789, Jefferson's name being used instead of Jay's; (2) the visit of the President to the Senate Chamber, in company with Secretary Knox, August 22 and 24, 1789; (3) the appearance of Secretary Knox in the House of Representatives, bearing sundry statements and papers, August 7 of the same year; and (4) the visit of Secretary Knox to the House of Representatives, when he delivered the statement of the troops in the service of the United States, August 10, 1789. The report boldly goes on to say: "Instances of this kind might be almost indefinitely multiplied, but these serve sufficiently to exhibit the practice established at an early day by those who framed the Constitution." The reasons for rejecting these events as proofs of any settled practice have already been set forth; but the report freely adds conjecture to the slender facts. Thus the committee further says: "When Hamilton made his great report on the public credit in 1790 he was . . . required to make it in writing, because the details were so numerous that, delivered orally, they would not remain in the memory of hearers; but the power and the propriety of requiring the personal presence of the Secretary were not then called in question, nor have they been questioned at any time since." The determined stand of the House of Representatives in 1792 against summoning the Secretaries is quite ignored.

The committee goes on to describe in large terms the influence that the heads of departments already exert through annual reports, special reports, private consultations, and attendance at committee meetings; and to maintain that the

mode of their influence would be improved by consultation face to face between these officers and Congress sitting as a body. As to the objection that the Executive would encroach upon the Legislature, and the contrary one, that the Legislature would encroach upon it, the report maintains that each power would sustain itself against the other. This point that the influence of the Executive upon the proceedings of Congress is already a great one is found in almost all of the discussions of the subject from inside of the government. Although the bill introduced in 1879 received a distinguished support from its committee, it was far from awakening any general interest, and never came to a vote.

The subject was brought up in Congress for the third time on January 5, 1886. John D. Long, ex-Secretary of the Navy, at that time a member of the House of Representatives, introduced a bill "to provide that the principal officer of each Department may occupy a seat on the floor of the House of Representatives." This bill, which did not include the Senate, provided for only a voluntary attendance. It was referred to the Committee on the Reform of the Civil Service, and nothing more was heard of it; it does not appear that the gentleman who introduced it took any active interest in it.

By this examination of Congressional journals, debates, and reports, two facts are established: first, it has been a mistake to suppose that the early Congresses afford a precedent for admitting Executive officers to a direct participation in Legislative proceedings; second, in Congress itself, since legislative reform has become the subject of conscious discussion, very little favor has ever been shown to any form of the proposition to bring the heads of departments into direct contact with the Legislative body. To be sure, a few expressions of opinion on the part of distinguished public officers can be found, which perhaps indicate that the proposition has had a more weighty support in official circles than this investigation shows. It is stated upon the best authority [33] that Mr. Blaine, who had signed the Senate Report upon the subject in 1881, said, while

[33] Hart, *Practical Essays on American Government*, p. 5.

he was Secretary of State, that he would give two years of his life for an opportunity to debate in Congress a measure which he considered of prime importance. Mr. Gamaliel Bradford, in his *Lesson of Popular Government*, states confidently that President Hayes once expressed himself privately in favor of the plan. George H. Bristow and John Sherman are also cited by Mr. Bradford as favoring such an expedient in the light of their experience at the head of the Treasury Department. It does not appear, however, that any of these gentlemen ever advocated the measure publicly, although the most important bill upon the subject was before Congress in the presidency of Mr. Hayes and the secretaryship of Mr. Sherman. It could be said, on the other side, that Senator George F. Hoar and Speaker Thomas B. Reed expressed themselves as opposed to the plan.

Outside of official circles, a discussion of this subject has been carried on since about 1870. Articles have occasionally appeared in the leading magazines, and several treatises have been published, which discuss the question of bringing together or keeping apart the Executive and Legislative branches of the National government. This propaganda seems to have been started by the English writer, Walter Bagehot, in his *English Constitution*, first published in 1867, with a second edition in 1873, which went further than the first in its comparison of the American with the English system of government. It appears to have been from this source that the terms "presidential system" and "parliamentary system" came into familiar use. Many academic writers, since that time, have set over against each other what Bagehot calls the two species of "government by discussion." "Committee government" or "Cabinet government" is another expression for the same antithesis, and more fully brings out the idea of the pre-eminence of the standing committees of Congress in the process of law-making. This phase of the subject was set forth more distinctly than ever before in Woodrow Wilson's *Congressional Government*, which first appeared in 1885. Other favorite terms among these writers are "responsible government," "ministerial responsibility," and "Cabinet re-

sponsibility," all of which refer to such a relation between the Executive and the Legislature as exists between the English Cabinet and the House of Commons. As these terms suggest, the academic discussion of this subject spreads out to greater issues than have been contemplated in the discussion in Congress. The largest group of these writers hold that the result of merely extending to the Houses of Congress as a whole the privileges which the heads of departments have always enjoyed with the committees of Congress would be insignificant, and that in order to effect any great change a revolution would be necessary, involving an amendment to the Constitution. On the question whether the "parliamentary system" would work better in the United States than the "presidential system" has done, there is no general agreement among the writers. Some are non-committal; a few are enthusiastic in favor of the English system. A tendency is, however, discernible among this first group of writers to state in the low est terms the actual influence of the American Executive upon the Legislative branch of the government. This tendency seems to have arisen from a feeling that the President was in the hands of a headless but overpowering Congress, so long as any portion of the Tenure-of-Office Act of 1867 remained in force, inasmuch as the most important contribution to the discussion which reflect this view were written prior to 1887, when the repealing of that law was completed.

There are, however, a few writers who contend that, if only some such step were taken as Pendleton proposed in Congress, the quality of legislation would be greatly improved without radically changing the American system; and a parallel [34] has been found in the working of the relation between the Executive Board of Switzerland and the Legislature.

A third group of writers take the position that no step in the proposed direction should be regarded with favor, because American ills do not demand an English cure. The principal figures [35] in this group are officers of the government who have contributed to the discussion in the magazines.

[34] Hannis Taylor, *North American Review*, 1894, August.

[35] George F. Hoar, *North American Review*, 1879, February; Thomas B. Reed, *Illustrated American*, 1897, July.

Whatever the shade of opinion of the writers who favor some form of the proposed innovation, it must be confessed that they have had no influence in stimulating the National government to reform itself. One reason for this failure is an ignorance of the real attitude of the government, present and past, towards the proposed expedient. Another reason is that very much of the discussion has been so purely theoretical that it has almost overlooked certain very great and highly practical aspects of the question. There has been little inquiry how far the American system, with all of its many extra-Constitutional features, is a growth that has developed naturally from a variety of conditions, partly determined by the rupture with the traditions of the past, and partly incident to the development of a new continent. Or, stating the point from the other side, there has been no thorough-going discussion of the question whether the institutions which have an outward resemblance to the English system could have developed a like substance under American conditions.

LIST OF VISITS PAID BY THE HEADS OF EXECUTIVE DEPARTMENTS TO THE HOUSES OF CONGRESS.

A. Occasions on which the Secretary of Foreign Affairs and the Secretary of War took part in executive proceedings of the Senate:

1. 1789, June 16, 17. Secretary Jay visits the Senate on business pertaining to the appointment of William Short as Charge d'Affaires at Paris. (Executive Journal of the Senate, vol. 1, p. 6.)

2. 1789, July 22. Secretary Jay attends the Senate to give information relative to a Consular Convention between France and the United States. (Executive Journal of the Senate, vol. 1, p. 7.)

3. 1789, August 22, 24. Secretary Knox accompanies President Washington to the Senate to give information relative to a treaty with the Creek Indians. (Executive Journal of the Senate, vol. 1, pp. 20, 23.)

B. Occasions on which the Secretary of War and the Secretary of Foreign Affairs delivered to the Houses of Congress messages and other documents from the President of the United States:

1. Senate in Executive Session:

a. 1789, May 25, Secretary Knox. (Executive Journal of the Senate, vol. 1, p. 3.)

b. 1789, September 17, Secretary Knox. (Executive Journal of the Senate, vol. 1, p. 26.)

c. 1789, September 28, Secretary Knox. Executive Journal of the Senate, vol. 1, p. 34.)

d. 1790, January 11, Secretary Knox. (Executive Journal of the Senate, vol. I, p. 36.)
e. 1790, August 7, Secretary Knox. (Executive Journal of the Senate, vol. I, p. 58.)
f. 1791, October 26, Secretary Knox. (Executive Journal of the Senate, vol. I, p. 87.)

2. Senate in Legislative Session:

a. 1789, August 10, Secretary Knox. (Journal of the Senate, First Session, p. 91.)
b. 1789, September 26, Secretary Jay. (Journal of the Senate, First Session, p. 151.)
c. 1789, September 29, Secretary Jay. (Journal of the Senate, First Session, p. 159.)
d. 1790, January 12, Secretary Knox. (Journal of the Senate, Second Session, p. 10.)
e. 1790, January 21, Secretary Knox. (Journal of the Senate, Second Session, p. 14.)
f. 1791, October 27, Secretary Knox. (Journal of the Senate, Fourth Session, p. 15.)

3. House of Representatives:

a. 1789, August 7, Secretary Knox. (Journal of the House, First Session, p. 92.)
b. 1789, August 10, Secretary Knox. (Journal of the House, First Session, p. 96.)
c. 1789, September 16, Secretary Knox. (Journal of the House, First Session, p. 141.)
d. 1790, January 12, Secretary Knox. (Journal of the House, Second Session, p. 12.)
e. 1790, January 21, Secretary Knox. (Journal of the House, Second Session, p. 17.)
f. 1790, March 1, Secretary Knox. (Journal of the House, Second Session, p. 43.)
g. VGTJ, March 12, Secretary Knox. (Journal of the House, Second Session, p. 56.)
h. 1791, October 27, Secretary Knox. (Journal of the House, Fourth Session, p. 14.)

List of Materials Consulted.

Journals of Congress; Executive Journal of the Senate; Annals of Congress; Congressional Globe; Congressional Record; House Reports; Senate Reports; Journal of the Congress of the Confederate States of America; Statutes at Large of the Provisional Government of the Confederate States of America, and of the First and Second Congresses.

Journal of William Maclay (1890); *Works of Washington* (Sparks, 1834; Ford, 1889); *Works of Alexander Hamilton* (Lodge, 1885); J. C. Hamilton, *History of the Republic*, etc. (1857); *Works of Jefferson* (Ford, 1892); *Works of Madison* (Rives, 1859; Hunt, 1900); *Works of Fisher*

Ames (1854); *Works of Gallatin* (Adams, 1879); *Works of John Adams* (1856); *Memoirs of John Quincy Adams* (1874; Knox MSS.*

Henry Adams, *Life of Albert Gallatin* (1879); Henry D. Capers, *Life of C. C. Memminger* (1893); Pleasant A. Stovall, *Life of Robert Toombs* (1892); Jefferson Davis, *Short History of the Confederate States of America* (1890); Alexander H. Stephens, *War between the States* (1868).

Walter Bagehot, *English Constitution* (1873); Woodrow Wilson, *Congressional Government* (1885); Abbott Lawrence Lowell, *Essays on Government* (1889); Gamaliel Bradford, *The Lesson of Popular Government* (1899); H. J. Ford, *Rise and Growth of American Politics* (1898); Albert Bushnell Hart, *Practical Essays on American Government* (1893).

The Nation (April, 1873; April, 1879; February, 1881; April, 1888); *The Atlantic Monthly* (July, 1882; February, 1886; April, 1886; June, 1890); *The North American Review* (January, 1877; February, 1879; March, 1894; August, 1894); *International Review* (March, 1877; August, 1879); *Contemporary Review* (December, 1885); *Overland Monthly* (January, 1884; February, 1887).

Freeman Snow, *A Defense of Congressional Government*, in American Historical Association Papers (1890); Gamaliel Bradford, *Congress and the Cabinet*, in Annals of American Academy of Political and Social Science (1891); Freeman Snow, Review of the Preceding, in Annals of American Academy, etc. (Vol. 3, July, 1892); Gamaliel Bradford, Rejoinder, in Annals of American Society (Vol. 4, 1893).

National Gazette (Freneau, 1791-93); *Pennsylvania Gazette* (1785-1789); *New York Gazette* (1790, 1791, 1792); *General Advertiser* (Philadelphia, 1790); *Maryland Journal* and *Baltimore Advertiser* (1792-1793).

* By the courtesy of the New England Genealogical Society.

THE REALITIES OF NEGRO SUFFRAGE.

BY ALBERT BUSHNELL HART.

One of the ill effects of a century of sectional controversy over the status of the negro is that every privilege to which his name is attached is at once seized upon by both sides as something abnormal. "Negro suffrage," for instance, probably seems to most people a modern, novel and unusual practice, which requires some kind of special justification. The truth is that, though there were plently of restrictions upon the suffrage from the earliest colonial times to the present day, those founded on race came in late, slowly, and in some communities not at all. The original American idea of the suffrage was that it was to be exercised only by the better class of the community, in Massachusetts and in Connecticut by members of the Congregational Church; in other colonies, by people owning real estate or paying a property tax or both. Most of the colonies were constantly being increased by a class of white people who came over as indentured servants with an obligation to serve for a term of years, and were ineligible for the suffrage. But those people served out their terms, acquired property, founded families, and came into the restricted political community. The free negroes as they came along were put on just the same footing, if they had the energy, thrift and fortune to get together the necessary property.

To this general principle, previous to the Revolution, there were two half exceptions and two complete ones. North Carolina from 1715 to 1734 and Virginia from 1723 to 1733 restricted the suffrage, but the British government objected on the ground that "it cannot be right to strip all persons of a black complexion from those rights which are so justly valuable to any free man." South Carolina, where the negroes became more numerous than the whites, took away the suffrage

in 1716 and never restored it,—an example followed by Georgia in 1761. Those two states repeated the disqualification in their revolutionary constitutions, but it was fifteen years before any others of the Southern States thought it necessary. During the Revolution some thousand of negroes were enlisted in the Continental and State armies; those of them who were slaves were set free, and it was not a time when people were disposed to take away a privilege hedged about with such difficulties that probably not one-third of the adult white men could vote.

In 1792 the northern group of slave-holding States, in which the number of free negroes was considerable, began by statute or new constitutional provision to exclude negroes, especially as the conditions of the suffrage were made easier because of the growth of democratic feeling. Delaware in 1792 was followed by Kentucky in 1799, Maryland in 1810, Virginia in 1830; every new Southern State—Louisiana, Mississippi, Alabama, Missouri, later Arkansas, Florida and Texas, came into the Union with constitutions prohibiting negro suffrage; the clause "every freeman" in the Tennessee Constitution was construed to apply only to white men. So that in 1835 North Carolina was the only slave-holding state in which negroes could vote, and in a case about 1840 Judge Gaston said: "The Constitution extended the franchise to every freeman who had arrived at the age of twenty-one and paid a public tax." The number of negro voters disfranchised by the new Constitution of 1835 was several hundred, and they were thought usually to have voted judiciously.

Of the New England communities, except Connecticut, not one in colonial, Revolutionary or later times has ever made any race distinction in its suffrage; Connecticut excluded negroes in 1814 and kept it up till the Civil War. New Jersey disfranchised them in 1807, three years after its gradual Emancipation Act; Pennsylvania in 1838; New York, after trying a special registration law in 1821, required that in order to vote negroes must show an extra term of residence and the possession of property worth $250.

The new Northwestern States all followed the example of

the Southwestern by putting a clause against negro suffrage into the Constitution by which they entered the Union, so that when the Civil War broke out, from a state of things in which negroes could vote in all but two out of thirteen commonwealths, the point was reached where they could vote only in five New England States, and (under special restrictions) in New York; and in many Northern States, especially Ohio, they were subject to many other humiliating distinctions from free whites.

During the early stages of the Civil War the general disposition of the Federal government was to take the slaveholders at their word by treating the slaves as property,—hence, two confiscation acts under which that kind of property as well as others, might be taken away from rebellious masters. It was only when parts of the Southern States were occupied by Union troops and efforts were made to re-establish some sort of State government that the possibility of negro suffrage in the South dawned upon Northern statesmen; and the notion was much strengthened by the simultaneous enlistment of negro troops, most of whom had formerly been slaves. In December, 1863, Secretary Chase, the most extreme anti-slavery man in Lincoln's cabinet, suggested that inasmuch as there were so few loyal white men available, perhaps some of the freedmen might be allowed to take part in reconstructing Louisiana. March 13, 1864 Lincoln wrote to Hahn in Louisiana: "I barely suggest for your private consideration whether some of the colored people may not be let in: as for instance the very intelligent, and especially those who have fought gallantly in our ranks." Nevertheless neither in the Louisiana nor the Arkansas nor the West Virginia government, nor in any of the Northern States where they had not the right before, were negroes admitted to the suffrage before the end of the Civil War.

Then came Reconstruction in which the suffrage was granted, first in the States which had seceded; then in all the States of the Union by the Fifteenth Amendment. Thomas Nelson Page has said of this process: "It was a torch placed in the hands of a child with which he has ravaged all about

him and involved himself in the general conflagration." How far is this statement justified either by the manner of conferring the suffrage or by its results? In the Southern States the restrictions on white voters had for the most part dropped away, except easy-going tax qualifications. When the issue of Reconstruction was fairly faced by President Johnson in 1865 he suggested that the suffrage be given to negroes who could read and write and had property to the amount of $250, but did not press the point. He attempted to exclude the people who had taken a prominent part in secession, that is the natural leaders, and to throw the new governments into the hands of the poor whites. The legislatures thus chosen in 1865, while recognizing that slavery was gone, showed a disposition to create a new status of peonage, which seemed to them a proper transition but to the North gave great alarm. These so-called "vagrant laws" aided the extremists in Congress in their effort so to reconstruct the South that the prevailing sentiment of the whites toward the negroes should not have effect.

The selection of negro suffrage as the panacea came about very slowly. In January 1867 Congress enfranchised the negroes in the District of Columbia and the Territories, and in March in the Reconstruction Act provided that new constitutions should be framed by conventions in the Southern States elected by all male citizens; and all the State constitutions thus framed included provisions for universal suffrage. In 1869 to clinch the matter the Fifteenth Amendment was introduced providing that "the right of citizens of the United States to vote shall not be abridged by the United States or by any State on account of race, color, or previous condition of servitude."

This amendment made impossible the repeal of the negro suffrage, already granted by statutes or constitutions of the Southern States, and the Federal Reconstruction acts deprived the Southern whites who had been connected with the Confederacy of a vote for delegates to the State Convention; but made no general and permanent exclusion from the suffrage, the only restriction of the Fourteenth Amendment being that

certain persons were deprived of the right to hold national or state office; but by later votes of Congress that restriction was removed for all but about three hundred persons. If the white voters could again act together they would be in a majority in every State except South Carolina and Mississippi; but by the State constitution or laws, the negroes had a majority in most Southern States through the disfranchisement of white voters on account of their connection with the Civil War. How far that process went is not easy to determine. In West Virginia, where the border feeling was very strong, boards of registration were appointed which cut out the white voters to the number of about twenty thousand; but the colored vote in that State was only a few thousand.

The Southern people to this day believe that the main purpose of this legislation was revenge, an effort to inflict the deepest humiliation and dishonor upon a people who had fought bravely and surrendered in good faith. Occasionally some fluent and graceful speaker informs the world that the South was deliberately turned over to the worst element within its own population, in order that its recovery might be set back, its scanty revenues pillaged, its influence in the Union destroyed, and a reign of miscegenation and race ruin set up. No such motive can be discovered in the debates of the time, though the attempt is made to fix them upon Thaddeus Stevens in the reeking romances of Thomas Dixon, Jr. Stevens had no purpose of humiliating simply by giving the black people votes, for he would not himself have been humiliated by such a process. What he wanted, and most unblushingly stated, was the perpetuity of the Republican Party; and he judged rightly enough that the negroes would be likely to vote against those who did not wish them free and still less wished them voters. As he coarsely expressed it, his policy toward the negro was "Root, hog or die;" that is, justify your suffrage or lose the game. He had no more thought of personal revenge than modern politicians have had in passing Ripper Bills for taking the control of Pennsylvania cities out of the hands of the people: it was all politics to him.

Stevens and his radical kind were not the people respon-

sible for negro suffrage. At first thrown out as a suggestion, it took root in the minds of men like Sumner and Lincoln because they believed, and the experience of their sections justified the belief, that the suffrage raised and dignified its possessor. In his last public address on April 11, 1865, Lincoln said: "Grant that he deserves the electoral franchise, will he not attain it sooner by saving the already advanced steps toward it?" That was the youth of the world, the time when people had a generous, uncritical confidence in human nature, when the ease with which the Irishman, the Scandinavian and the German had become Americans led to a like belief in the capacity of the African. Negro suffrage was the outcome of hopefulness, of confidence in free government, of the principle announced eighty years earlier by Jefferson that "the people are always the safest though not always the most wise depository of power." The negro was free, why should he not have the same incentives as other free men. Many people in the North expected the negro to stride forward in education, thrift and political judgment so fast that the South would be regenerated.

Now ensued the trial of negro suffrage, and most Southern writers on the subject of the present relations of the negroes and whites trace all the trouble back to those unholy acts of Congress and Constitutional amendments. Every southern child as he grows up becomes possessed of a fixed belief that from 1865 to about 1875 the South was governed by an unrighteous combination of negroes with a few "scalawags" or on-the-soil Republicans, and "Carpetbaggers," or Northern political adventurers. These things are within the memory of thousands of living men and women, and yet how warped already is the popular impression! In the first place, with the exception of Tennessee, where nearly half the State had been loyal during the war, and where there never was any negro supremacy, no legislatures chosen by negro votes or containing negro members appeared with authority until the readmission of the seceded States into the Union, which in no State was earlier than 1868, in three States was in 1870, and in Georgia was not till 1871. Up to those dates the South was in the

hands of military commanders, who sometimes were the only government; and, when there were governors and legislatures, did not hesitate to annul any law that seemed undesirable to them, to remove any official, or to reorganize any city government. Little criticism has ever been made of these military officers, whose régime was sometimes brusque but almost always fair and kindly.

Then when the States were finally turned over to the Reconstruction legislatures, except where the States had disfranchised a large proportion of the white voters the negroes were in the minority. The Carpetbaggers, though powerful in organization, were but a few hundred in number; and the worst features of most of the Reconstruction governments are due to Southern white voters born on the soil, acting in conjunction with the worst elements of the negro vote. It was not a savory period in American politics: from 1869 to 1871 Boss Tweed had his serpent grip on New York City, and squeezed out more millions than were stolen in the entire South. In Louisiana and in South Carolina there was the most scandalous violence, corruption and misgovernment, and in all the States the difficulty was aggravated by the managers of the negroes getting possession of the county governments. When local taxes rose to six times what they had been before these governments came into force; when a North Carolina carpetbag county government put a fence costing $10,000 around a Court House yard; when a State like South Carolina issued so many bonds that it was impossible to tell within fifteen million dollars how many of them were fraudulent, it was a piteous state of things.

How long did this condition last? The legislatures beginning in 1868 were speedily confronted by the Ku-Klux movement, which rose in 1869, and by 1870 led to investigation by Congress and severe repressive legislation. By 1871, partly through a natural reaction, partly through these violent methods, Virginia and several other States were back in the hands of the white people. In Alabama the domination of the Reconstruction legislature, which is still currently supposed in that State to have fearfully plundered and debauched the

State, lasted just twenty-eight months, and a prominent Southerner now alive who was a member of it says that so far as he is aware the only questionable statute was in aid of railroads, and that to this day it is a fair question whether that money was not spent to the advantage of the State. Up to this time the Southern State governments had always been economically and for the most part honestly administered, and the taxes had been very low. Now, in a half dozen or more States there was disgraceful robbery and an overturning of the sense of political responsibility. The Federal civil service throughout this whole period was extremely corrupt, backed up the worst that there was in political life, and must share in the responsibility for the condition of things. It is, however, doubtful whether the best of legislatures could have prevented the lawlessness and uneasiness which always follows a war or could have compelled the two races to live in terms of amity. Some good things were done by these Reconstruction legislatures, particularly the founding of systems of common schools throughout the South; and one of the strongest opponents of negro suffrage in South Carolina has said that with the exception of that clause, the Constitution of 1868 was the best that the State ever had.

The demerits of the Reconstruction governments have been the theme of Southern writers ever since; all sorts of ills from the crowding of whites off the sidewalk up to race wars have been laid at the door of negro suffrage; and efforts are now making through books and plays to revive the fierce antagonism of that period. Although the South considers Reconstruction an absolute proof that the negro is incapable of self-government and still more unworthy of taking any part in the government of white people, the experience of that troublous time throws little light upon what might have been the effect of negro suffrage if it had come about under different circumstances. In the first place, those eligible for the suffrage were already full-grown and nearly beyond any influence of education; in the second place, negro suffrage was tangled up with questions of the status of white voters and with the relation of States to the Union, with which it had not

any organic connection; in the next place, the negroes having no traditional and experienced leaders of their own, fell into the hands of bad and designing whites, without whom the corruption of Reconstruction could hardly have been carried through.

Above all, whether absolutely necessary or not, the sudden termination of negro suffrage gave no time for any complete proof as to the capacity of the negro to exercise discretion in his vote; and the efforts to prevent his voting simply increased his obstinate determination to vote for none but Republican candidates and not to exercise an indivdual choice, or divide his vote.

The disfranchisement of the negroes before the Civil War proceeded slowly and in all the forms of law; the disfranchisement during Reconstruction was a violent and irregular process which has left permanent influences of distrust and hatred between the races. The Ku-Klux plan, started as a sort of lark and modeled on the old patrol system, with its ghostly bands of masked horsemen and its terrifying missives, proved so efficacious that it spread throughout the South; and though Congress investigated and passed statutes of a type never before put into action by the Federal Government for the protection of the suffrage in Federal elections, though in the election of 1872 the issue of the suppression of the negro vote helped to re-elect Grant, State after State was recovered by the white voters, and negroes gradually disappeared from the State Legislatures and from the national Senate and House. Then came the "Tidal Wave" of 1874 in which the Southern States elected nearly a solid Democratic delegation to the House of Representatives. In the election of 1876 every Southern State except three was at first returned as Democratic and in South Carolina, Louisiana and Florida the Democrats insisted that white voters had been kept from the polls by Federal troops. Everybody knew that several of these disputed States were carried by preventing negroes from voting; everybody knew also that the Reconstruction governments had been corrupt and disgraceful. The result of the contest was that Mr. Hayes was declared President, but that he withdrew the troops, and

immediately the negro vote in all the Southern States was reduced below the point where it could endanger white supremacy.

For fifteen years the South did not deny the legal right of negroes to vote. In some localities they were allowed to choose some negro county officers, where they were decidedly in the majority, and that is still the case. In North Carolina county officers were designated by the legislature so as to prevent any such result. For a time the negroes were allowed to elect one of their own number member of Congress from one district which was carved out for them along the Sea Islands of South Carolina; but that privilege also was eventually taken away, until not a single negro member sat in either house of Congress to represent a race numbering one-eighth of the population of the United States.

Of the various methods of withdrawing negro suffrage the simplest and most obvious, that of direct State statute or a constitutional amendment, was barred by the Fifteenth Amendment; but Congress found means to avoid this dilemma in the seat of national government, in which the suffrage enjoyed by the negroes for seven years was in 1874 cut off by a statute repealing the existing territorial government; and since that time no person, white or black, has had any vote on any measure or for any officer within the District of Columbia. The reason was the riotous extravagance of the territorial government, under the organization of a white man named Shepherd; and as only a third of the population of the district was negro, he must have found aiders and abetters among the whites; but the action of Congress was a backset to negro suffrage throughout the country.

Four other methods have been found for reducing and in some cases practically annihilating the negro vote: these are, violence, tricks, tax and other qualifications, and special constitutional qualifications. Violence on a large scale—the driving of men from the polls, or the sweeping of the country before election day with warnings not to come out, was a crude and temporary method, which in the last thirty years has probably not been practiced more often in the Southern

than in the Northern States, although it has always lain in the background as an ultimate resort.

Much more familiar during the period from 1870 to 1890 was the skillful use of electoral machinery and outright fraud to prevent the negro vote from being counted. Among these methods enumerated by a southern writer are: theft of the ballot boxes, suppression of the ballot boxes, exchanging boxes, removal of the polls to unknown places, doctoring the returns, false certifications, repeating, excising names from the registry book, and illegal arrests before the day of election. A method which attracted great attention at the time was that of the "tissue ballots," a packet of votes deposited as though one ballot, and afterwards counted by judges who of course protected the fraud. Another device which was not illegal although it acted as an extra-legal intelligence qualification was the "Eight Ballot Box Law" of South Carolina, under which no vote was counted unless it was put into the box for which it was precisely intended: it had the difficulty of being a method which if applied uprightly would also exclude some white voters.

Throughout the last thirty years the tendency in the Northern States has been to abolish all property and tax qualifications. In the Southern States public sentiment has worked the other way. With a view to cut down negro suffrage a number of Southern States have enacted tax qualifications rather high for the conditions, and combined with perplexing regulations: Georgia has had a poll tax continuously since 1789; Florida, Tennessee and Arkansas between 1885 and 1892 put on new taxes, Tennessee requiring that the receipt be shown at the polls. The disqualifications for crime have also been somewhat enlarged and possibly a penalty involving disfranchisement is sometimes affixed by judges upon a negro which would not be assigned to a white man.

The important thing to remember in this process is that as a matter of fact the negro vote has been suppressed, in some States since 1871, in all States so far as State and national elections were concerned, since 1876. There is hardly room for discussion with our Southern brethren as to whether they

mean or expect to take away negro suffrage—they have done so practically. No negro is a candidate for any State office or except in a very few communities for any county or local office. Some negroes have always voted, but they have never been allowed to exercise a balance of power between two State parties or between two candidates for Congress. They might safely vote for a man who was certain to be elected, or for a man in a sure minority; but in the essential quality of a vote, that it may go to convert a minority into a majority, the negroes have for three decades been hopelessly disfranchised.

To this principle there has been one notable exception. In 1892 the Republicans of North Carolina, including most of the negroes actually allowed to vote, fused with the Populists, and elected some State officers and members of Congress, including a colored man named White. The possibility that other such combinations would be formed in the future spread consternation, for throughout the South there is the strongest possible determination not to permit any State government to exist, based upon negro votes. That episode therefore, gave additional strength to a movement which had already made itself felt, for a new and more sweeping method of hedging in the negro vote by State constitutional amendments. The purpose of this new legislation has been perfectly open and candid; exactly as the people who suppressed the negro vote during Reconstruction still recount their part as one of their claims to distinction, so the members of the Constitutional Conventions from 1890 to 1904 have clearly set forth their intention to cut out most of the ignorant negro voters, while leaving in most of the white voters; although an eye to the Fifteenth Amendment and to the Supreme Court of the United States has made it necessary to frame these new regulations so as to leave out of sight this important distinction. Six States—Mississippi, Louisiana, North Carolina, South Carolina, Alabama, and Virginia—have now framed such amendments, some of which were submitted to popular vote, but in the case of Mississippi and Louisiana and Virginia, the Convention put the Constitution into effect without submitting it to the people. Many of these amendments are com-

plicated and limited one part by another, but the main principles are as follows:

(1) Nearly all the constitutions in terms prohibit persons convicted of certain crimes from ever voting again; for instance in Mississippi, the offences enumerated are "bribery, burglary, theft, arson, obtaining money under false pretense, embezzlement, perjury or bigamy;" in Virginia petty larceny is added.

(2) Two states—Alabama and Mississippi—have a moderate property qualification as one of several alternatives.

(3) All the six States except Louisiana require the prepayment of poll taxes for one, two or three years, (in Alabama all accrued taxes since 1901); this qualification in itself is not a difficult one and does not apply to one race more than another.

(4) In two States, South Carolina and Mississippi, the voter must be able to prove at the polls that he has paid his taxes, and since negroes are notoriously careless about keeping such papers, they are much more likely to lose the necessary paper.

(5) All the constitutions have an educational clause; but in two States taxes on property worth $300 may be a substitute for reading and writing; and in Mississippi it is provided that the voter must "be able to read any section of the constitution of this State; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof."

(6) This so-called "understanding clause" is very curiously applied in South Carolina and Virginia, where persons who would otherwise be voters up to a date fixed in the constitution—(1898 in Mississippi and 1904 in Virginia)—and who have registered previous to those dates shall remain voters thereafter, even though they cannot read and write. This is the so-called "Temporary Understanding Clause," which has frequently been explained as lasting for only a few years. In reality it gives the suffrage for life to any person who, up to the date mentioned, though illiterate, can persuade the election officers that he can understand a part of the con-

stitution. An attempt was recently made to apply this or a similar law to a well-educated young negro in Virginia, who, to prove his understanding was asked by the election officers: "What clauses of the present Virginia constitution are derived from Magna Charta?" To which he promptly replied, "I don't know, unless it is that no negro shall be allowed to vote in this commonwealth.'" He was duly registered; but the whole machinery of this act is in the hands of the white election officers, who are expected to be easily convinced that a white man understands and with difficulty convinced in the case of a negro.

(7) Five of the six constitutions contain the remarkable "grandfather clause," which in somewhat different phraseology sets forth that the descendant of a person who was a voter prior to January 1, 1867 shall vote, notwithstanding his inability to satisfy the intelligence or property qualifications. This is the most doubtful part of the whole system, for it sets up an exemption from the ordinary qualifications which applies only to members of one race and cannot possibly be acquired by members of the negro race. It seems probable that this clause would be disallowed by the Supreme Court if a case involving it could be distinctly made up.

(8) In three States, Alabama imitated by North Carolina and Virginia, there is a very singular clause which would be hard to parallel in the legislation of any other country, by which persons who have honorably served as soldiers not only in the United States Army, but in the Confederate Army or the forces of the State in the Civil War, shall be excused from other qualifications. That former Confederate soldiers should not be disfranchised for that reason alone is logical; but that service against the government should be a special reason for granting a privilege from which others like circumstance are excluded, is a whimsicality which would not pass for a joke in less good-natured countries.

(9) In one State—Alabama—during about a year the registrars could enter upon the voting list male citizens "of good character and who understand the duties and obligations of citizenship under a Republican form of government."

These various systems of qualification and disqualification, so complicated that the man who drew the South Carolina suffrage provision told the writer that at the next election thereafter he lost his vote because he had forgotten to fulfil all the formalities, have substantially the same purpose, namely, to bring the suffrage back to the classes which exercised it before the war. Nowhere is the negro as such excluded; but he is less likely to have the tax and property qualifications than the poor white, and much less likely than the intelligent and educated white; and he is handicapped by the large degree of discretion given to registrars and officials at the polls, who are almost invariably whites. When a negro dentist in Montgomery, Alabama, a well-educated man possessing the constitutional qualifications, went in at the appointed time to register, the official greeted him with the courteous question: "What do you want, nigger?" "I want to be registered." "Nigger, get out of here; this ain't our day for registering niggers." That man was not registered, and only about five thousand negroes out of about a hundred and thirty thousand negro men of voting age are registered in that State. It is true, as pointed out by the South Carolinian statesman above referred to, that "we shut out a good many of our own people;" and it is also true that the educational qualification is one that can be acquired, and is fast being acquired by the negroes, for about two-thirds of the negro children can read and write. Nevertheless the motive of the whole proceeding is to exclude the ignorant negro while admitting most of the ignorant whites.

These extreme measures are spreading through the South and are likely to spread still farther. A similar constitutional amendment in Maryland, where there is not the slightest danger of negro supremacy, inasmuch as the blacks are less than a fourth of the whole population, was defeated a few weeks ago only by an appeal to the foreign voter, who thought that the discretion under the law might be applied against him. No one could criticise a genuine intelligence qualification, whether direct or by the convenient and wholesome method of an Australian ballot which can only be voted

by an intelligent man, but there are several serious objections to the disfranchisement that has been practised.

In the first place, the recent statutes and constitutional amendments are not perfectly sincere, their end is clouded and concealed for the simple reason that to avow their purpose would bring them into collision with the Fifteenth Amendment, and might cause a diminution of the number of representatives in Congress under the Fourteenth Amendment.

In the second place, this entire exclusion of a large number of negroes together with a small number of whites, leaves a proletariat of people who have no direct way of relieving their discontents. The main argument for universal suffrage is that everybody has his "day in court," his opportunity to express his opinion by his ballot. The Southern method is the reversal of a process which has been going on for a century in the American commonwealths.

In the third place, it is an attempt to set up a privileged class. The "grandfather clause" creates an hereditary right to vote, which exists nowhere else in the United States. If the restrictions were administered in good faith all but this discrimination would disappear, for both negroes and whites would find their way into the electorate through education; but it is not the intention of the South to permit any considerable number of negro voters at any time in the future. The basis of the suffrage in the South is, "This is a white man's government."

In the next place the precedent of restricting the effective suffrage to the whites is very likely to develop into a restriction to Anglo-Saxons. The South needs foreign laborers, who would go far toward settling the labor troubles of that section. Is it likely that a community which admits only a few of the most intelligent negroes to the suffrage will open it to foreigners as ignorant as the poor whites? If the Italians are allowed to vote, eventually they will control whole communities; if they are not allowed to vote, they will go elsewhere.

No thinking man can blame the Southern people for wishing to keep their State governments upright and efficient; no one can blame them for real intelligence qualifications, such as

can be overcome by diligent study or by thrift; nobody can blame them for preferring restrictions expressed in statutes and State constitutions to irregular violence and fraud. The principal grounds for criticism are two: first, that the system is really, although not openly, a discrimination between men on the ground, not of their character or their acquisitions, but of their color; secondly, that it means the permanent disfranchisement of the greater part of the negro race, and their consequent relegation to a position in which one of the most effective springs of thrift and ambition is removed.

SUFFRAGE CONDITIONS IN THE SOUTH: THE CONSTITUTIONAL POINT OF VIEW.

BY HON. JOHN C. ROSE,

UNITED STATES DISTRICT ATTORNEY OF BALTIMORE, MD.

(This address will appear in the American Political Science Review.)

DISCUSSION.

JOHN MARTIN: The question of negro suffrage is not one to be determined by agreement between the whites of the North and the whites of the South; it is a matter for the blacks themselves to settle. Most discussions of the subject assume that the opportunity to vote is to be conceded to the negro, if at all, by the Southern whites upon the demand of the outraged North. Not so. "Who would be free themselves must strike the blow." After the close of the war the North, driven by the necessities of the situation, placed the ballot in the negro's unpractised hands for the purpose of protecting him against re-enslavement. That purpose has been fulfilled. The ruling whites have been occupied in intimidating him at the polls and counting out his vote, and have, in consequence, been unable to make headway with the purpose (which was evident among them at the close of the war) to shackle him afresh so soon as the power of the North should be withdrawn.

But the ex-slave, unused to directing his own actions and incapable of coping with his old masters, could not retain possession of the weapon that the North had thrust into his hands; still less could he use it for his own advancement in civilization. Of what use would it be, then, once more to confer upon him this gift at present?

Our attitude toward the negro must be the same as our

attitude towards those Northern communities who also have shown themselves incapable of permanently retaining self-government. Up to last month the city of Philadelphia had for many years been ruled by a tyranny which had persistently robbed the citizens of their ballot rights. This had been done by means of stuffing the boxes, padding the registers, intimidating voters, fraudulent counting—exactly the same means as were employed in the South against the negro until the passage of the constitutional amendments for his disfranchisement made these means no longer necessary. Other cities in the North did not beseech the oppressors of Philadelphia, out of their mercy and their love for the Constitution, to stay their hands and to restore self-government to the supine people; instead they called upon the Philadelphians themselves to show their own manhood and to recapture their liberties by their own efforts. When the victims began to stir in their own behalf the citizens of half-free places, like New York, applauded their resolution and gave what assistance they could.

It will be the same with the enfranchisement of the negro. In such a district as one mentioned in this debate, where 200,000 blacks live around 32,000 whites, no power outside can give to the torpid majority the right to vote. That it must seize for itself. The peasants of France and England wrung from a reluctant nobility a suffrage, which, since they won it by their own efforts, they have known how to hold. Not until the negro develops intelligence, economic power, faculty for organization, and determined discontent, to such a degree as to make it easier and safer to grant him the vote than to withhold it, will he be enfranchised.

S. C. Mitchell: I wish to thank Professor Hart and Mr. Rose for these interesting and instructive papers. Sympathy is the only attitude of mind in which we should approach this vital subject. The South can profit by the objective view of the North, while the North can profit by the interior view of the South. Prejudice, partisan politics, sectionalism only becloud the situation. Let us be done with them. I delight to find that earnest men in the North and South can meet

here for the discussion of this national problem in the spirit of sympathy and mutual helpfulness.

Can we withhold our sympathy from the people who are wrestling with conditions so adverse as the people of the South? Think of the stressful aspect of this problem in my native state of Mississippi. In the "Shoe-string District," as it is called, composed of counties in the Delta, there are 232,-174 people, and of these the negroes number 200,034 and the whites only 32,090. In the most populous county of the district there are 44,000 negroes and 5,000 whites. These figures, striking as they are, only faintly represent the stupendous proportions of this problem, as it presents itself to the men who are immersed in its very depths. If, under such conditions as these figures reveal, the Saxon portion of the population officer the labor, direct commerce, administer government, man schools and churches, and furnish initiative in civilization, they deserve well in the opinion of all.

I can say emphatically that the disfranchisement of the negro by the Mississippi Constitution of 1890 brought relief to conditions that were no longer tolerable. And in stating this I have the good of the negro himself at heart. Before the negro there stand four doors through which he may gain an entrance to the better things in life. These are (1) thrift, (2) education, (3) religion, and (4) politics. The pity is that he bolted first for the last door—politics. But this mistake is correcting itself, and the negro is beginning to knock at the doors of thrift, education both manual and mental, and religion wholly moral. He sees that suffrage is a privilege to be gained only by the worthy, reckoned according to property and intelligence. This burrowing notion is inciting the negro more and more to press into the gateways of industry, training, and morals.

"Whenever a separation is made between liberty and justice, neither is safe." Those weighty words of Edmund Burke must ever be kept in mind by the Southern people. Justice and humanity are to be determining factors in reaching any permanent racial adjustment in the South. There are two tests of strength; the one to see how much you can push

down, the other to see how much you can pull up. I suggest that we Saxon people of the South try only the latter. By taking from the negro the saloon, by giving him the school, by suppressing lynching, which is only a reversion to barbarism, and by dealing with him always in the spirit of justice and humanity, we shall quicken what is noblest in the nature of the negro, we shall work out some satisfactory basis for racial adjustment, we shall increase the productive activities of the South, and we shall gain the sympathy and approval of the civilized world, looking to-day with intensest interest upon the men and women in the South who are striving to energize the liberal and kindly forces operative there.

HENRY E. SHEPHERD: Professor Hart and all who sympathized with him speak in absolute ignorance of the actual conditions and are mere dreamers and visionaries, cherishing hallucinations and nourishing delusions. The North and its policy during the Saturnalian era of reconstruction are entirely accountable of the situation as it exists in the Southern States. All the ignominy, shame, bloodshed, moral debasment that followed the crowning infamy of the Fifteenth Amendment must be laid at the door of the North alone. The suffrage of the negro was thrust upon the South at the point of the bayonet, literally, not metaphorically. The whole movement was thoroughly revolutionary—anarchy, chaos, ruin, was the inevitable result. If the incubus of negro rule had not been thrown off by revolutionary measures, the South would have been transformed into a vast St. Domingo in ten additional years. It was the old struggle of civilization again barbarism — the white man against the savage. I directly and emphatically challenge my audience, composed almost entirely of representatives from the North and the West, to declare what they would have done in similar circumstances. Would they have sacrificed their civilization, their material fortunes, the honor of their wives and daughters, to the demon of negro sovereignty, or would they have resisted to the last extremity and with all the resources that God and nature had placed at their

disposal? Some day, let me say, in closing, the ingredients of your poisoned chalice may be commended to your own lips.

RACIAL DISTINCTIONS IN SOUTHERN LAW.

BY MR. GILBERT T. STEPHENSON,

PENDLETON, N. C.

(This address will appear in the American Political Science Review.)

CORRUPT PRACTICES AND ELECTIONS LAWS IN THE UNITED STATES SINCE 1890.

BY GEORGE L. FOX,

THE UNIVERSITY SCHOOL, NEW HAVEN, CONN.

All corrupt practices laws in this republic go back to the English corrupt practices prevention law of 1883 as the source of their inspiration and the ideal standard by which they should be measured. It was passed in Mr. Gladstone's second ministry, has been tested in five fiercely contested elections, and will be tested again next month in the great struggle at the polls on the eve of which England now stands.

So far as a foreigner can judge, it is a permanent bulwark in the English constitution. The same is true of the Dominion of Canada. That lusty colony which lies between us and the North Pole followed the mother country, in 1884, with the enactment of a very close counterpart of the English law, which has been rigidly enforced.

In the United States the record is a sadly different one. There neither is, nor has been, any federal law like the Dominion statute of Canada, while the few state laws, both in theory and practice, fall far short of similar laws of the British provinces of America.

In speaking of corrupt practices laws I adopt the definition of the New York state library, which includes all laws requiring candidates or committees to file a sworn statement of election expenses.

The first law of this kind in this country appears to have been the first one enacted by New York in 1890. In reviewing the fifteen years since that time, twenty states in all are found to have placed upon their statute books laws of this kind. In 1891 Colorado and Michigan came into line; in 1892, Massachusetts; in 1893, California, Missouri and Kansas; in 1895, Connecticut, North Carolina, Kentucky, Nevada and Minnesota; in 1896, Ohio; in 1897, Tennessee, Florida,

Wisconsin and Nebraska; in 1903, Vermont and Virginia; in 1905, Texas. Of these states, four having once put their hand to the plough have turned back and repealed their laws, viz., Kansas, Nevada, Michigan and Ohio. From limitations of time, therefore, this discussion will be confined to the consideration of still existing state laws that are most comprehensive and more nearly approach the standard of the English law.

What are the main features of the English law?

1. Elaborate definition of corrupt and illegal practices, with provisions of rigorous penalties.

Classification of offences under three heads:

(*a*) Corrupt practices.

(*b*) Illegal practices.

(*c*) Illegal payments.

2. Requirement of unity of expenditures which are restricted to those payments made through one duly authorized agent.

3. Limitation of expenditures.

(*a*) In purpose and character.

(*b*) In amount, according to number of voters in electoral area.

(*c*) Limitation of number of paid workers, and prohibition of paid conveyances.

(*d*) Prohibition of payment for bands of music, torches, and insignia of any kind.

(*e*) Prohibition of treating and other entertainments before, during, or after an election for purposes of winning votes.

4. Requirement of sworn statements of expenditures by candidates and agents, the form of detailed affidavit being prescribed by law.

5. The publication of these itemized expenses in a public document.

6. The setting up of an election court, consisting of two judges, without jury, for inquiry into the alleged violations of law upon the petition of one or more voters.

7. The making of the election null and void if both judges

find satisfactory evidence of corrupt practices in the electoral area by candidate or agent.

8. The disqualification of such candidate for office for a term of years.

Let us test by this standard the existing laws of the following six states, viz., California, Missouri, Minnesota, Nebraska, Massachusetts and Connecticut.

The California law seems to have been modeled quite closely after the English law. It defines corrupt practices, prohibits betting and treating, prescribes unity of expenditure, and limits legal expenditure as to the purposes and amount. The legal amount is determined in a unique fashion, viz., by the amount of salary paid to the holders of office: If for a term of one year, five per cent. of one year's salary; if for a term of two years, ten per cent. of one year's salary, and so on. Sworn statements of all candidates according to prescribed form of affidavit are required. Failure to file brings forfeiture of office. The election court can be set up by any elector for inquiry into alleged violations of the law. The law applies to all offices, and is extremely complicated and detailed.

Much simpler is the Minnesota law of 1895. This also defines corrupt practices and prohibits treating, but limits the amount of legal expenditure according to number of voters in electoral area. Failure to file sworn statement brings a fine limited to a thousand dollars, and no officer can take office or receive salary until such statement is filed.

Most states provide a period of limitation within which the election court may be set up, but Minnesota permits such inquiry at any time during the term of office. A verdict of guilty declares the office vacant. The law applies to primaries also, but does not apply to town, village, or school district elections.

The Missouri law of 1893 describes elaborately those who are guilty of briberies, forbids corporations to contribute, and provides that in case the attorney-general fails to bring suit after a petition of the candidate having the next highest number of votes the applicant himself, in the name of the state, may bring suit at his own expense; and such action shall have

preference on the docket over all civil actions whatsoever. In case after trial judgment is rendered ousting the defendant, then said judgment shall award the office to the applicant who had the next highest number of votes.

This to my mind is dangerous procedure, quite at variance with the English law which orders a new election.

The Nebraska law of 1897 resembles the Missouri law in many particulars. In case, however, judgment goes against the leading candidate, election is voided, and next higher candidate does not win office. It covers caucus and regular elections. All candidates at caucuses must file statements within ten days of caucus, and all candidates at elections within ten days of election. Excluding traveling expenses, the amount allowed is $100 for 5,000 voters or less, and an increment of $1.50 for each additional one hundred voters is allowed. The reckoning is made on the number of votes for the office at the preceding election, and serious excess of expenditure over the limit should void the election. The fine when paid by delinquent candidates goes to the school fund of the county.

The Massachusetts law of 1892 is less comprehensive and stringent than any of these previously described. Its chief feature is the requirement of detailed sworn statements of expenses accompanied by vouchers. There is no limitation of purposes of expenses nor of amount. The two Democratic candidates for governor and lieutenant-governor there each swear to having spent $25,000 to $50,000. There is no election court for inquiry into violations of the law. Not until 1904 did the law prescribe the form of affidavit to be signed.

In 1895 Connecticut adopted a new law somewhat less comprehensive even than the Massachusetts law. It simply defined corrupt practices at election, prescribed punishment, and required sworn statements of candidates for all offices. For ten years it was very generally ignored, especially in the famous Bulkeley campaign for the United States senatorship in 1904. In 1905 a new and much more stringent law was passed which was modeled after the English law. It strictly limits the purposes of expenditures and brings delinquent candidates to book if they fail to file sworn statements within

fifteen days after the election. Under the new law the secretary of state in the case of state officers, and the town clerk in the case of all other officers of lower grade are required to notify the proper prosecuting officers of those candidates who are delinquent. The law commands such prosecuting officer to bring such delinquents into court within ten days. The fine to which they are liable is $25 for each day of delinquency.

The law makes it possible for any voter to set in motion the new machinery which will bring offenders against the ballott-box to justice.

The election court, on petition of any voter, may be set up, but in somewhat different fashion from that of the Western states heretofore described. It is made a special term of court for this purpose only. Two judges preside and there is no jury. Unanimous decision of the two judges is necessary for conviction. In connection with this court the law makes a distinct contribution to our political science. This was necessary on account of the fixed constitutions of American states as compared with the flexible constitution of England.

According to the Constitution of Connecticut the final decision as to elections to the legislature rests with the legislature itself, and the final decision as to state officers rests with a board of certain state officers. In such cases, therefore, the law authorizes the court to make a finding of the facts, and send it to the governor. But in the case of city and town elections the election court has absolute power to declare the election null and void. As to the national and federal elections, it is clear that no state could have power to nullify such elections. In such cases the court is authorized to make its finding of facts, and transmit it to Congress, which has the final decision with regard to such elections.

This new law was modeled to a considerable degree on a bill which was framed by me at the request of the judiciary committee of the State Legislature. The instructions given to me were to adapt the English law to political conditions in Connecticut. My bill contained an anti-treating clause and anti-free-pass clause, a clause strictly limiting the amount of legal expenditure, and a clause forbidding contributions to

election expenses by corporations. All these clauses were rejected, but in the present state of the public mind it is reasonable to think that they would be approved by the Legislature if it were now in session.

The new law also provides that even where a candidate has paid nothing for his election, he is not excused from filing an affidavit, but must swear to that fact. This requirement has aroused considerable criticism. Objectors say, "Why burden a man with this requirement when he has incurred no expenditure?" The sufficient answer is that a chain is no stronger than its weakest link. The moment that an opportunity is offered any candidate of withholding a sworn statement on the supposition that he has spent nothing, there is immediately open to the unscrupulous candidate the chance of avoiding perjury by withholding his statement which, if honestly made, might convict.

The requirement of the sworn statement is not merely to gratify curiosity, but to register a permanent court record which the candidate must always face. If sound testimony in opposition is afterwards brought forward, you have the evidence to convict before an impartial jury. Hence follows naturally the conclusion which the flabbiness of the New York law for the last fifteen years proves, that while the mere requirement of sworn statement may have some deterrent value, it has little practical value unless the law supplements it by an election court wherein the statement may be scrutinized, evidence as to its falsity admitted, and the election made null and void because of perjury.

The puissant probe and scalpel of Mr. Charles E. Hughes in bringing to light one of the sores of the body politic has very justly aroused a strong demand for laws forbidding corporations to contribute in any way to election expenses. Five states at least already have such laws, and there may be others of which I have not heard. These are Florida, Missouri, Nebraska, Kentucky and Tennessee. It is a rather curious fact that in England, where elections are most free from corruption, apparently no such provision exists, unless it has escaped me in my scrutiny of the law. Two facts make such a statute

less needed there. First, in the parliamentary elections all expenses, both of the actual polling and of the preliminary canvass, have to be borne by the candidates themselves. Second, the strict limitation of the amount of legal expenses greatly lessens the actual cost of canvass and elections. Apparently, if recent newspaper reports be true, the scandal of this sort in England concerns not the corporations, but individuals who have recntly been members of the House of Lords, and to whom have been given those subordinate titles so dear to Englishmen.

Moreover, the free trade policy of England, the municipalization of public utilities, and the high prevailing standard of political ethics there cut the nerve of any movement towards large contributions to the elections expenses by corporations. It is this argument, as well as others, which I hope will soon bury Joe Chamberlain's fiscal policy so deep that the "hand of the resurrection will not fathom its January grave."

Such, in brief outline, is the record of corrupt practices laws in the United States as they appear upon the statute book. But in this country more than in England there is considerable of a gap between nominal legislation and actual government, between the law of the statute book and the law of actual life. Too often admirable laws are like the chest of drawers in Bob Sawyer's surgery which astonished Mr. Winkle. The reply some of you may remember. "Dummies, my boy, dummies. One-half are empty, and the other half don't open."

In an endeavor to answer the question, How are these laws enforced? I sent out the following list of inquiries to reliable citizens of the states which have the best laws:

Questions on the Corrupt Practices Law in your State.

1. Is the law regularly enforced?
2. How many election trials have occurred under the law?
3. Has any one been unseated for violating the law?
4. Has any one been fined or imprisoned for violating the law?
5. What percentage of candidates have filed sworn statements of expenses?

6. Has any one been brought into court for failure to file such statements? What was the result?

7. Is there any disposition to repeal the law?

8. Is the law more or less a dead letter on the statute books?

9. Are all candidates for office required to file sworn statements of expenses? If not, who are excepted?

The answers to these questions have been very meagre and unsatisfactory. My California correspondent answers "No" to all questions except 5. All candidates file statements, but he thinks as to limit of expenditures the law is a dead letter.

With regard to Connecticut, I can speak from my own knowledge. From 1895 to 1905 the law was largely a dead letter. The first instance of prosecution against delinquent candidates that I have found record of in the United States was in Stamford, Conn., in 1899, where four candidates were prosecuted by City Attorney Galen Carter for failure to file returns of expenses. On conviction they appealed to a higher court in vain, and were released after payment of a moderate fine. It is needless to say that in Stamford since that time no candidate has failed to file the proper returns. In other parts of the state, however, the law has been very much ignored till the present year, when new teeth were put into the law. In October, 1905, besides town officials, judges of probate, who are state officers, were elected. All the state officers complied with the law save one, who was fined, although his failure was not due to himself, but to the neglect of his agent. Seventy-five per cent of the town candidates filed their sworn statements. Out of the delinquent candidates more than one hundred were brought into court, and in most cases a moderate fine was imposed. Since the October elections five cities have held city elections, and it would appear that in each instance all candidates have duly complied with the law. It would seem from this that the only way to have a law observed is to have it enforced.

Much to the regret of some citizens no election court has yet been set up in Connecticut. A "bye" election for Congress was held in the third district, and there was much talk of illegal use of money at the primaries. But it was impossible

to get any voter of the district to bring a petition for such inquiry, although offer to share the expense of such petition came from outside the district.

A similar offer was made in the city election of Bridgeport, the third largest city of the state, to any candidate or citizen who knew of corrupt use of money, and wished to have it revealed and punished. But no petition was forthcoming, although the city aldermen at their regular meeting after the election passed a resolution for voting machines on the ground that it was a matter of general report that votes were bought in every ward in the city at the last election.

This shows that the great drawback to efficient enforcement of such a law is the civic inertia or the civic timidity of defeated candidates or average citizens.

The record of enforcement of the law in Massachusetts since 1892 seems to have been much the same as that of Connecticut up to 1905. According to a reliable correspondent of the New York *Evening Post*, the law has been more or less ignored by candidates and committees. So far as I can learn, no one in Massachusetts has ever been brought into court for failing to file a sworn statement of election expenses, though violation of the law, according to the statute, must be punished by a fine of not over one thousand dollars, or by imprisonment not over one year. In 1904 one hundred and eighty-eight individuals and twenty-three political committees were reported by the secretary of state as delinquent, but no one was prosecuted.

From what I have heard, and from what I have not heard, my study of the returns leads me to the conclusion that in the United States corrupt practices laws have been largely dead letter laws on the statute book.

The true way out of this wilderness into the promised land is not to repeal these laws in disgust, as Ohio and Michigan did, but to enforce the laws rigorously, and to awaken the public conscience to support them.

The effective enforcement of these laws in Canada and England is at once a silent rebuke to our failure and inertia, and yet an example for us to follow. In England since 1883

there have been thirty contested parliamentary election trials, fourteen of which removed the candidate elected from office and ordered a new election. In many cases the reasons for unseating the unsuccessful candidate would amaze the average politician in this country. At Barrow-in-Furness, it was because meals were given to political workers: at Hexham, because the candidate provided the tea at a picnic; at South Meath, because the priests had denied the Mass to Parnellites and threatened to withhold the sacrament from those who voted for the Parnellite candidate; at Pontefract because a voter's railway fare had been paid for by the candidate's agent; at Southampton, for the some reason; at Litchfield, because the candidate did not include in his sworn return a number of items of election expenses; at Monmouth, because he had said untruly of his opponent, a paper manufacturer, "he lives in London on the profits of cheap foreign labor and pays his election expenses out of the profits of the labor of Italian workmen, employed by him at a wage of twenty cents a day." This illustrates the sound doctrine of Governor Folk that the essence of good government lies in the impartial enforcement of laws that are on the statute book. Yet much as I deplore the ignominious failure of the United States to protect the sanctity of the ballot, I clearly recognize the fact that the full application of the English law to the United States would be extremely difficult, not only because of the low prevailing standard of political ethics here, but also on account of our complex form of government. It includes state and federal powers, many and frequent elections of many executive officers, and in many cases wide electoral areas for the same office. Compared with this the problem in England is simplicity itself. Almost no executive officers there are elected by the voters. Such officials are appointed by popularly elected legislative bodies who control but do not administer the functions of government. Once in five years a parliamentary election is held. Every three years county councillors are elected. Every year one-third of the municipal borough councillors are elected. That practically completes the list with the exception of parish councils and boards of

guardians. The largest electoral area in number of voters is the Romford county parliamentary division of Essex with 40,000 electors. In most of these elections the voters cannot vote for more than two candidates.

But as the poet sings "Not failure, but low aim is crime." In this matter we must follow Emerson, and hitch our wagon to a star. Towards the high ideal to which England has attained we must press forward. Along that path of progress a few states with faltering steps have gone. Let there be no footsteps backward in the onward march. The national government and the sister commonwealths should show to the world, by enacting and enforcing such laws, that self-government in this republic can rise as high in political morality as in the self-governing colony of Canada, or in that mighty nation girt by the sounding seas, from whose loins we are sprung, of whom we so proudly say, "Did ever mother have such a daughter? Did ever daughter have such a mother?"

SUPPLEMENT.

CONNECTICUT.

In Hartford, the capital of Connecticut, the election for Mayor took place April 3, 1906. A week before the election both the candidates and the town chairman of the Democratic and the Republican parties united in a letter to the citizens of Hartford, asking for a hearty co-operation in a rigid enforcement of the new corrupt practices law. The response was prompt and hearty from all classes of citizens. The President of Trinity College, the leading clergymen, the leading professional and business men, all offered to serve on election day at the polls, to prevent and detect bribery and corrupt purchase of votes. As the best machinery for attaining this end, a general committee of two prominent citizens in each ward, one Republican and one Democrat, was appointed, to supervise and scrutinize the election at the polls.

The committee of twenty-four, which included the Roman Catholic Bishop of Hartford issued the following admirable

address. It is a method of procedure which might well be followed by all citizens, laboring for the same worthy ends:

To the People of Hartford:

The committee which is striving to serve you, as your agents, in respect to violation of the corrupt practices act at the impending municipal election, asks your help in the following ways:

1. We want volunteers to complete our list of watchers on election day. Report in person at the Board of Trade rooms, No. 49 Pearl street (telephone No. 1617-2), which by the courtesy of the Board of Trade has been placed at our disposition for headquarters, not later than 9 o'clock this (Monday) evening, and you will be assigned hours and place of duty. It is assumed that many will be able to give but a fraction of the day. Only qualified voters should offer themselves.

2. Owing to the shortness of the time, we have not yet filled our general committee of lawyers. We desire and expect to have lawyers detailed for each polling place, one for each half of the day, with a small reserve at headquarters. Any who are willing to serve will please report as early as possible to-day. We shall have counsel present at headquarters who have given particular attention to the present law and who will advise respecting its meaning and enforcement.

3. From now until after the election we request all citizens to be on the alert for evidence, or even hints pointing in the direction of the purchase, or the sale of votes, and to report the same promptly to us in person, by telephone, or by messenger. Anonymous communications can receive no attention. We will violate no confidence and will use no voluntary evidence in a way to involve an informant without the latter's consent. What we chiefly desire at present is rather to put a stop to bribery than to punish the parties to it. There are many familiar with it in the past who now desire to see it stopped. They will know the symptoms of the operation and recognize many of the old operators. Let them watch these, interfere with the consummation of their plans and inform us at once.

4. If any one is witness of an overt act, as has heretofore been possible in many instances, keep the offender in sight and call immediately for a police officer or for one of our workers. We will do the rest.

5. Keep eyes and ears open after the election. Facts often transpire then. We intend to pursue breaches of the law until they are outlawed.

6. Do not forget the seriousness of the situation. There is probably not a ward in Hartford where there are not 5 per cent. of the voters classed by those who profess to be most familiar with the facts as venal, and there are some wards where the percentage is placed as high as 35. We do not vouch for the accuracy of

these statements; it is enough that they are publicly made by reputable and sober-minded citizens.

7. Much of the responsibility for extravagant election expenditure, and most certainly much of the excuse offered therefor, results from voters staying away from the polls until they are sent for. Moreover, it is not to be forgotten that one method of corruption now said to be practiced or contemplated is bribery of voters to abstain from voting. It will greatly simplify our task if you will vote promptly and without waiting for transportation.

8. We are all volunteers, working absolutely without pay, and we shall pay nobody for his work—save in thanks; which, in the name of the town of Hartford, even if without formal authorization by the town, we take the liberty of tendering in advance. THE COMMITTEE OF TWENTY-FOUR.

According to reliable testimony, the city election at Hartford on April 3, 1906, was much freer from corrupt use of money than any for several years. The Hartford *Courant*, the chief Republican paper of Connecticut, said of it editorially as follows:

WITHOUT MONEY AND WITHOUT PRICE.

The holding of an election in such a city as Hartford under such conditions as were agreed upon for yesterday's affair is a memorable fact in the history of the state. It has been one of the most creditable political incidents for many years. The two town committee chairmen, Messrs. Robinson and Marvin, issued a joint call through the newspapers for a committee of citizens who would do what they could to have the corrupt practices act enforced. The call met a quick response, and the committee under Rev. Dr. McCook did good work. It wasn't merely volunteer police service; it was the quick expression of a general desire that the money-soaking processes of past elections should cease, and a demand for better things. The force of public opinion thus expressed was felt all through the city. If there was misuse of money, it was in very secret ways and on a limited scale. The election as a whole was clean and honest and a credit to Hartford. The whole state can afford to look this way, take heart and learn a lesson. It is with honesty in politics as it was with honesty years ago in finance—"The way to resume is to resume."

MASSACHUSETTS.

The official account of the operation of the Massachusetts law is found in the following extract from page XV. of the report of Hon. Herbert Parker, recently Attorney General of Massachusetts, submitted in January, 1906:

Chapter 11 of the Revised Laws was amended by chapters 375 and 380 of the Acts of 1904, with the intent that the requirements with regard to limitations upon, and publications of, expenses of candidates for public office be made more specific and more comprehensive.

Returns so required by the law are first subjected to the examination of municipal authorities in cases of local elections, and to the examination of the Secretary of State in those of State offices. After such examination, returns not appearing to be in exact and formal compliance with the statutory provisions are referred to the Attorney-General for consideration, and such action as he may deem to be advisable. Consideration of questions with regard to expenditures is thus, so far as the action of the Attorney-General is concerned, confined to what appears upon the returns themselves.

Two elections have been conducted since this charge was committed to the department of the Attorney-General. The returns of the last election have not yet been fully examined by me, nor has any final analysis been made of them, so that I have not yet been able to determine whether any proceedings thereon should be taken.

The returns of the last previous election have been investigated. All parties apparently delinquent were so notified by me, and, save in a few cases of insignificant character, have all presented explanations or further statements, relieving them of the appearance of intentional violation of law. On their face they have exhibited only technical or formal failures to comply with the law, nor have I discovered any evident attempt to evade or violate legal requirements. A general misconception of exact requirements with regard to expenditures and returns has, however, been evident, but a general regard for the substantial demands of the law has likewise been manifest. I have deemed it unwise and inexpedient to resort to prosecution in any case as yet investigated by me, being of opinion that too stringent or severe action for merely formal non-compliance with the law would impose undue penalties upon those who have apparently intended to act in obedience to it. The number and evident frankness of the returns, disclosing apparently without any intentional concealment the nature and the amount of expenditures made by candidates or in their behalf during the last State election, has revealed a very general and increasing recognition of the essential requirements of the law, especially in its demand that such expenditures shall have fullest publicity. The very large sums of money admittedly expended in the last political campaign and election require careful consideration, and may justify the imposition of some limitations beyond which expenditures for any purpose shall be absolutely forbidden.

Public sentiment and individual action now appear to be in general accord with the purposes of this legislation, and I think there

is reason to confidently expect its more complete recognition and adoption as it becomes more fully understood. Hereafter, a stricter compliance with its details may rightly be insisted upon. Already it has had salutary effect, and I believe it to be firmly established as an essential feature of a sound and accepted public policy.

Some further amendments of the statute are to be desired, particularly to avoid some possible ambiguity in its present phrase, and for the establishment of a more exact definition of permissible expenditures and of those which are prohibited. Expenditures of money at primaries or on election days should be rigidly restricted, and all such forbidden except for actual transportation of voters who otherwise would be unable to attend. There should be a more specific declaration of the form and detail of returns. The obligation to make a return, whether there have been expenditures or not, should be absolutely and clearly set forth. Many instances have occurred where there has been a delay beyond the prescribed limit of time in making such returns, even where there has been an evident purpose to act in full obedience to the law. To meet and obviate this frequent default, I recommend the enactment of a supplemental provision, denying to any candidate for election the right to have his name printed upon the official ballot unless the required returns concerning his expenses shall have been duly filed. Doubtless, if the fact could be demonstrated it would appear that in many cases there have been some wilful failures to answer the demands of the law. No such cases, however, have either come or been called to my attention. The review of the returns, so far as made, has in no case established such violation of the law; it is not to be inferred, from the fact that as yet no prosecutions or convictions have been had, that the law is without effect, or ignored. On the contrary, since no cases have yet appeared justifying or requiring prosecution, it may, I think, be truly said that there is general observance and recognition of the law, and that its purpose has been very generally attained.

If the amendments suggested shall be adopted, I am of opinion that the law will be more intelligible and capable of more efficient enforcement, and the public more exactly advised of its requirements, to which they should then be held to a more precise obedience.

NEW YORK.

Important bills for improving the New York law are now before the legislature of that state. One of these is very novel and radical in its nature, and if enacted and enforced will be very effective. It aims at the party as well as at the candidate. It provides that in the lower elections, within narrow electoral areas, where a party has made corrupt use of money in an election dis-

trict, a court may, after careful investigation, throw out all the votes cast for that party ticket in that election district.

PENNSYLVANIA.

At the special session of the Pennsylvania legislature a comprehensive new elections law was passed, in February, 1906, which embodied provisions against corrupt practices. It provides for unity of expenditure through official treasurers, for limitations of expenses in kind, for the filing of sworn statements of expenses within fifteen days, with vouchers, without which no officer can be sworn in or receive salary. These statements may be audited by a court on petition. If it finds that illegal expenses have been incurred, it must so certify to the proper executive and legislative authorities and to the district attorney.

TEXAS.

In the new stringent law with regard to elections, passed by the Texas legislature in May, 1905, there are provisions against corrupt practices, although there is no especial section devoted to the same. No one can vote unless he presents at the polls his poll-tax receipt for tax paid in current year. The receipt is then stamped by the election official. To pay the poll-tax of another citizen is a felony. To give or promise money or office for voting or abstaining from voting is a felony. To prevent a chartered and bribed press, no paper may print for a consideration in favor of or against a candidate any article except with the words "political advertisement" annexed. To loan money for payment of poll-tax is a misdemeanor. All candidates must file sworn and detailed statements of expenditures ten days after election, and all managers of party headquarters are required to do the same, under penalty of fine and punishment.

STATE INTERFERENCE.

BY THEODORE MARBURG,

BALTIMORE, MD.

At a certain period of our development liberty came to mean freedom from restraint by the State for the reason that the State, administered by arbitrary rulers, was, and had been an oppressor. Omnipresent and manifest in the person of its officials, the State came to be looked upon as the principal, if not the sole oppressor. At that juncture it was highly important to take a stand against State interference in order to correct abuses. But when this was accomplished the fight for liberty was by no means won; only the first stage of it was won. The struggle has now to be directed against certain institutions or customs which give to corporations and individuals the power to oppress others. Under an autocracy this struggle is difficult. But when the State has been won over to the side of the people, and is administered by and for the people, it at once becomes possible to increase the liberty of the average citizen by having the State interfere with certain practices, old or new, which curtail that liberty.

The liberty which the opponents of State interference have in mind is only half liberty; it is to be free from undue restraint and violence on the part of the State and its officers; the other half is what Locke broadly terms freedom "from restraint and violence from others." To provide for the common defence and to suppress violence within the community may be called the primitive functions of the State. When, therefore, we call upon the government to broaden the liberties of the individual by preventing his more powerful neighbor from interfering unduly with him, we are not asking of it anything new. It is only a new dress which the old problem has put on.

We know that there is a constant struggle for the survival of the fittest in the world of ideas, as well as in the physical world; that this struggle, under right conditions, makes for

progress; that if the fight be fair the great common sense of the many will hold the ship true. I take this to be the philosophic basis of our democracy. The great fact of the past is the oppression of the many by the few, and the political basis of democracy is that under it the many have the remedy in their own hands when the few oppress them. But back of the political basis is the philosophic basis, for the reason that the whole political fabric, no matter how ingenious, would come tumbling about our ears unless we could rely upon the right action of the many after public opinion had become informed. I recall, with interest, the remark of an eminent lawyer to the effect that on questions of fact he would trust the judgment of the average twelve men, selected as the ordinary jury is selected, in preference to that of any one man the most enlightened. Just as in the animal world subtle faculties appear which we are unable to explain by reference to any human powers, so the *united thinking of the many* seems to develop a sense which no individual enjoys. Now, this united thinking of the many is brought into play by institutions. It is true that we make our institutions; it is no less true that our institutions make us, and foremost amongst these institutions is the State. Few things, therefore, are more important than to consider at all times how and to what extent to make use of this powerful instrument.

In a Greek treatise of unknown authorship we find the remark that if all the customs practiced in different parts of the world were gathered into a bag, and each people, or group, were allowed to throw out such as it considered harmful or foolish, there would be nothing left in the bag. This figure brings vividly to mind the fact that truth is not after all universal and eternal. It is related both to time and place; related to place in that the background of history, the training and disposition of a given people fit them for institutions for which another people may not be fitted; related to time in that changing conditions bring other needs.

The logical basis of State interference is the assumption that the unconscious evolution which prevails in the animal world becomes partly conscious and self-directed evolution when we

reach man, who thinks. This process is greatly assisted by democratic institutions under which the people act more as a single organism. The world will never be able to do without leaders. Progress will still be ordered by the few. But the significant thing is the growing ability of the masses to choose between contending ideas and contending leaders. That which is deadening is tyranny, the tyranny which takes away fairness from the struggle. Our growing civilization should stand for justice: private justice, public justice and international justice. The unrestrained play of private interests similarly to that of national rivalries does not always make for justice, and in so far as this is true, State interference rests upon common ground with all human law.

If natural selection—which means the killing off of the unfit—were alone relied upon to modify ideas, false beliefs and practices could disappear only with the disappearance of the people holding and observing them. But the conscious element, reflection, spares the race this hardship. Nature itself is non-moral. If we cast ourselves from a height we are apt to be killed. Our death is caused by the operation of a natural law—the law of gravitation. But law in that sense is very different from human law which enjoins a certain course of conduct upon men. Similarly, economic laws, like other natural laws, mean simply an effect following a cause. If bad money be introduced into a country it drives out good money. The State interferes and forbids banks to issue money except under certain prescribed conditions, thereby avoiding bringing into play the economic law referred to. Human institutions have as their object the bringing into play of natural laws which are beneficial, and the avoidance of acts which natural laws show us to be harmful. The institution of the school, public and private, is based directly upon this principle. With education the man becomes the heir of all the past, the inheritor of the strivings of the human soul in the fields of conduct, of religion, of art, of imaginative literature; the sacrifice made for fellow-men in a by-gone era is made again for him, since knowledge of it stiffens his courage and purpose; what these prophets have seen and these heroes have

done he can see and do; the larger purposes of the world shine out through all its tangled and painful happenings; that thing, more real than the solid globe itself, the will of man, is seen in its true light as the moving force of history.

If men grow up in ignorance of the past; if they are not taught to use this tool civilization, which assumes so many forms in mind and matter, they are apt to run counter to natural laws, and suffer unnecessary hardship. The State recognizes this fact and proceeds to interfere with the liberty of the parent by compelling the parent to send the child to school. The institution of the church serves the double purpose of upholding the moral code which saves men from mutual destruction, and of implanting ideals which operate as a positive force. But here the modern State believes it inexpedient to interfere. As has been cleverly said, compulsory vaccination may be based on definite data, but "theological experts can produce no similarly trustworthy statistics about the relation between orthodoxy and immunity from damnation."

Moreover, there can be no moral act which is not accepted by the reason of the doer and which is not in that sense voluntary. Acts done under compulsion cannot be regarded as moral, motive being an essential element of morality.

Under the old doctrine of use-inheritance, it was held that the education of the parent reflected itself in the superior natural powers of the child. The more modern view is that this is "not proved," but that the improvement in the species is due rather to accidental variation, the superiority which has come to the individual by accident enabling him the better to survive and perpetuate his kind.

D. G. Ritchie believed that this doubt cast upon the doctrine of use-inheritance called for greater attention to environment, which includes institutions. He held that we inherit simply the capacity for civilization, civilization itself being transmitted in environment.

The higher we rise in the animal world the more do imitation and training take the place of instinct which governs among the lower species. We may contribute much to hu-

man welfare by mere example and by setting up ideals, which example and ideals are handed on by language and other social institutions. The spread of ideas regarding a better social organization is itself a factor in the realization of it. Even such a cold and practical individual as the "Iron Chancellor" recognized this fact when in 1884 in the Reichstag he pointed to social democracy as the handwriting on the wall "notifying the propertied classes that all is not as it should be." "If there were no social democrats," said he, "if there were not a lot of people who fear them, the important progress we have made in social reform would not be." But the establishment of a fit government is a prerequisite for the free play of decent social institutions. As Aristotle observed, man is a political animal and can realize himself only in the State. The highest modern thought is that not even individual happiness is an end in itself but is to be sought only in so far as it promotes the general welfare. Both social and political institutions are machinery; that is, the means to an end. The "necessary evil" view of government, a view which would limit the functions of the State, if possible, to the preservation of order, disappears as government comes to represent more fully the interests of the whole people instead of the interests of a class.

The end of the State is to make it possible for the individual to realize himself in the broadest sense. Now, the extent to which the State should interfere with the activities of the people, with this end in view, depends upon the character of the people and upon their past. A race that has been bred in an atmosphere of sturdy independence, that has thoroughgoing convictions of justice and a well established practice of it, a race that has a strong sense of the social value of *observance* of the law as distinguished from fear of the *officer* of the law, wants little State interference; though it is just to such a race that enlightened State interference when it does come is most helpful.

When the State prohibits to the railroads grade crossings, when it prescribes for them patent couplers and block signals, when for factories it institutes boiler inspection and demands

that dangerous machinery be guarded and unsanitary conditions corrected, when it makes pilotage laws and exercises the numerous police powers which conduce to the health and comfort of the public, it is restricting the liberty of individuals, or small groups of individuals, but is increasing the liberty of many times their number. When it limits the acts which a minor can legally do, it curtails the liberty of the young person but in so doing enlarges the liberty and happiness of the future adult. State interference, in the modern sense, may raise the ceiling of the poor man's cabin and enable him to stand upright.

When it is proposed that the State should regulate the hours of labor for adults, or compel parents to send their children to school, it is frequently objected that men have a right to work as many hours as they like, and to set their children to work. But this idea that the individual has certain natural rights of which the State cannot deprive him is passing away. Men are beginning to realize that all social right resolves itself into social expediency, i. e., the ultimate welfare of society in the long result. The doctrine of natural rights served its purpose in the day when tyranny often took the form of harmful interference with the free action of the individual. Instead of following this circuitous path we now appeal directly to social expediency. Whatever it is expedient that the State should do, it has a right to do. Right in this sense is, of course, something different from legal right which is determined by law. The State now deprives the criminal of the foremost of his so-called natural rights—the right to life. It forbids us now to do certain work on Sunday. If it thinks it socially expedient that it limit the hours of labor on week days, and forbid child labor, it has a right so to do.

If this reasoning be correct, the only limit that can be placed upon State activity is the limit which the facts of the past and of the contemporary world prescribe, and these facts must be weighed in the light of the capacity, traditions, and present condition of each particular people. Countries which stand for paternalism, such as France, where the centralized

system of the first Napoleon still prevails despite the several outward changes in the form of government, feel called upon to-day to conduct a crusade against State interference. Eugene Rostand, a recent champion of "laissez faire," cries out against the fetish worship of the State regarded as an instrument of limitless possibilities. He warns us that this fetishism is fostered by low motives, by false notions, and from its very nature grows and fattens on itself. Raising his voice for the salvation of a bureaucracy ridden people, he jumps to the conclusion that the trend of modern thought is *against* State interference, that private initiative is destined to possess itself sooner or later of more than one sphere where the State functions to-day. Let us hope that for his own devoted land his forecast is true. Rostand complains not only of the intrusion of the State into fields properly the domain of private enterprise, but of an inundation of *laws* as well. He objects to being submerged by this flood of statutes and exclaims "In the training of character, in initiative, in knowledge, in the persevering will of man, and not in the text of codes, resides the real spring of progress." He may well complain of the paternalism of a government which has made, and is making, so many mistakes.

But a people of different temperament from the French, and of different traditions, may be justified in trusting themselves with powers and a line of conduct which the French may have abused. In England, State interference has grown and is growing. As with so many of her institutions, it has taken the form of a gradual unfolding instead of an abrupt introduction, except in the matter of the craze for municipal ownership which has recently swept over the land. But even in the case of a people who have back of them what we happen to regard as the very soundest traditions, it is important to differentiate the forms of interference proposed and to consider their probable effects.

State interference may take the form of regulating the conduct of corporate bodies and individuals, may extend to ownership or to actual operation of enterprises: these are very different functions. Just now this question is uppermost in

the minds of people in America, as well as in England, and calls for serious attention. For us in America extensive State undertakings, (the term includes municipal undertakings,) might prove a misfortune. There are several reasons why we should move cautiously in the matter. In the first place it becomes difficult in the course of time to judge whether the State is conducting an enterprise economically. Data for just comparison is lacking. Moreover people do not examine critically the cost of State service. If there be a deficit it is covered in the general budget, the claim being made that the people are getting the service at less than cost. Again, are we likely to have as rapid progress in a given industry under State ownership? In connection with services which are simple or have reached a high degree of perfection, this question, it is true, is not important. For example, no one to-day questions the propriety of each city owning and operating its own water supply. But there *are* services in which there are still many unsolved problems. Is it wise to place such services in the hands of the municipality? And who is to determine when a service is perfected? When men laid a wooden rail, surmounted by a strip of iron, and found that by means of this device a horse could draw many more people in their omnibus, no doubt they thought this to be perfection. Let us suppose that the street railways in America, and in the leading cities of Europe, had then been acquired by the municipalities. How many of us believe that public action would have been as enlightened as private initiative has proven in devising rapid transit?

But even were economy of management and progress not at stake, there is yet an element of grave danger in this movement; I mean the danger which arises from multiplying the number of public servants. France is an example of a country which has increased the number of its government employees, few of whom work as honestly as men in private industry, until they constitute an unreasonable percentage of the people. The functionary in France, as well as in Germany, has begun to look upon public office as an hereditary family right. This class lives upon the State and may sap

its very life. We must not forget that when we take such a step it is not for to-day and to-morrow but for the long future. Turn over the street railways, with their army of 140 thousand employes, to the municipalities, and presently a demand will arise that the steam railways with 600 thousand employes be acquired by the State or Federal government. Some unwise practices on the part of other services would precipitate a demand for their acquisition. American cities generally receive at present an inadequate return for the valuable privileges granted to public service corporations, but the remedies short of State ownership and operation are not exhausted.[1]

The penalties of mismanagement of enterprises owned but not operated by the government will be principally economic; while government operation, involving an important increase in the number of government employes, may work serious injury to our institutions; the evil effects of the one being temporary, of the other permanent and basic.

Regulation of the charges of public-service corporations is a well established principle, but there again the question of expediency may at any time be raised. Are we not, for example, attacking the wrong end of the railway problem when we attempt to fix rates? Two great sources of railway accidents and casualties to-day are the single track and grade crossing, and the single track is a source of freight congestion in times of business activity. Would it not be wiser to compel the railways by law to lay double tracks and abolish grade crossings, to give us frequent and speedy service; in other words, to benefit themselves while they benefit us, rather than for us to pursue a policy which will reduce railway earnings, and thereby postpone the advent of needed improvements?

[1] It is urged that where the service has become a monopoly, competition in bids for new franchises, or for renewals of old franchises, ceases. In such cases the municipality may say: "You shall have a renewal of the franchise, but on condition that you share with the municipality all dividends over and above a fixed rate." This would leave to the public-service corporation ample incentive to increase its revenues by improving the service and would insure to the State a more adequate share of growing profits.

Ought we not to leave the railways profitable, speculatively profitable, if you will, because of there being few greater factors in the progress of the country than railway extension and improvement?

Let us get firm hold of the underlying principle that the State has a right to interfere wherever it is socially expedient that it should interfere. To fix a limit to the activities of the State by setting up a code of natural rights with which the State may not interfere, or to determine the field of the State's activties from an analysis of the nature of the State, is simply to becloud the various issues which confront us from time to time. If, for example, we assert that the State has no right to make railway tariffs, or that it is unjust to the stockholders of railways to permit it to do so, we are fixing a principle for all time. When looked at, on the other hand, from the standpoint of social expediency we may discover that while it may be inexpedient for the State to fix railway tariffs to-day, conditions may so change in the course, say, of two generations as to make such action entirely justifiable and highly expedient. On the other hand, if the test of social expediency declares government operation to be dangerous to the very institutions of the State, such a conclusion once reached is not dependent on time and place but is comparatively permanent. Questions of this kind are often confused by considering them at one and the same time from the standpoints of law and of expediency. It is better to separate the two. The State is empowered by law to do many things which the dictates of expediency cause it in ordinary times to refrain from doing. On the other hand, if we arrive at the conclusion that a certain course of action is socially expedient, we can set about amending statutes and constitutions where necessary.

Of course, social expediency, as we are using the term, can never sanction injustice because justice is one of the vital elements in social welfare. But the question of justice to the stockholder of corporations may be solved by some such device as a gradual application of the new rule so as to permit the growth of business to modify the results which would follow an immediate application of the rule.

It is an error to start with any preconceived notions for or against State interference. The end of State action, we have seen, is to enable the individual to realize himself fully in the State. In the case of specific measures it has been suggested that we ask, 1st. Does the end proposed lead toward our ultimate end? 2d. Are the means adequate? 3d. Are they too costly?

Our past justifies the belief that the people of the United States can be trusted to use State interference wisely; that they will make of it an instrument of great good. But any such conclusion presupposes a free and full discussion of all the dangers of State interference as well as the advantages. If we can set forth in its true light the supreme peril to our institutions which will follow an excessive increase in the number of State employees, arising from extensive government operation of enterprises, we shall have avoided a principal danger.

THE SCOPE OF POLITICAL SCIENCE.

BY MR. HENRY JONES FORD,

BALTIMORE, MD.

The question must sometimes occur to us who are interested in political science, whether it will ever supply general principles for the guidance of statecraft. At present there seems to be little if any connection between them. Technical skill and special knowledge in history, economics and jurisprudence are appreciated and employed by statesmen, but the idea of determining state policy upon scientific principles has no place in practical politics. In memoirs of Bismarck one finds much about politics as an art and nothing about politics as a science except in contemptuous references to people who approach politics in a doctrinaire spirit. His way of expressing a small opinion of Gladstone's statesmanship was to speak of him as "Professor" Gladstone.[1] This did not mean that Bismarck felt any contempt for professors as such—administration in Germany makes large use of the service of specialists—but that his conception of statecraft was altogether empirical and he distrusted political activities based upon abstract principles. This, I believe, is a frame of mind common among statesmen. Professor Sheldon Amos, in his "Science of Politics" remarks that "practical statesmen, immersed in actual business and oppressed by the ever-recurring presence of new emergencies, almost resent the notion of applying the comprehensive principles of science."[2]

Examination of manuals of political science might furnish practical statesmen with the retort that political science has no comprehensive principles to offer. Eminent authorities in political science restrict its scope, either by giving a technical meaning to the term "Political" or to the term "the State."

[1] *Bismarck: Some Secret Pages of His History*, Moritz Busch, Vol. II, p. 262.

[2] The Science of Politics, p. 66.

The process has resulted in a detachment of terms from their ordinary meaning. The Statesmen's Year Book for 1905, although it does not pretend to include all the states in the world, but only such as are important enough to figure in a manual for practical use, gives historical and statistical data in regard to over 250. It might be supposed that the province of political science is to explain the nature of these various states and to account for their characteristics, but one will look in vain for such information. On the contrary, one finds that comparatively few of the states mentioned in handbooks and gazetteers are admitted to be states at all, in formal treatises on political science. Professor Amos says: "The geographical area to which the science of politics extends at present is limited to the countries of Europe and North America and to those countries which are directly subjected to the influence and dominating control of Europe and the United States. Thus it is not saying too much to allege that for all practical purposes of practical politics and therefore of that science on which all sound practice must rest, the State is that integral unity which has been discovered by the accidents of European government."

Prof. Burgess, in his "Political Science and Constitutional Law," effects the same limitation by annexing a technical meaning to the word "Political." He restricts its application to one class of states which alone he recognizes as having attained political organization, and in this way substantially concurs with Prof. Amos, remarking that "only Europe and North America have succeeded in developing such political organizations as furnish the material for scientific treatment." Prof. Dunning in his "History of Political Theories" proposes to leave to sociology "the entire field of primitive institutions" and the context suggests that he means to include in the transfer all institutions of public authority except those of "the European Aryan peoples." He holds with Prof. Burgess that they are "the only peoples to whom the term 'political' may properly be applied."[3] Definitions of the

[3] Political Theories: Ancient and Mediæval, pp. XVII, XIX.

State may be found in works of political science which imply a broader scope than is indicated by these quotations;—Professor Burgess himself holds that the State is the permanent and universal condition of human nature;—but in the selection of subject matter the dominant tendency is to narrow the scope of political science to a particular phase of development which has resulted in special forms embodied in positive law. The treatment of these forms under the limitations imposed may result in immediate gains as regards clearness and precision. These excellences appear in the treatises I have mentioned. But when the field is thus narrowed, political science announces by its own definitions that it does not pretend to be co-extensive with all forms of public authority. The very states whose activities are the chief centers of disturbance in world politics are excluded. I refer to China, Russia and Turkey. Professor Burgess goes so far as to say: "The national, popular state alone furnishes the objective reality upon which political science can rest in the construction of a truly scientific political system. All other forms contain mysteries which the scientific mind must not approach too closely." [4]

Even if we accept the national, popular state of Western civilization as the basis of political science what assurance is there of the possession of a true norm? The history of political theories frequently warns us that political forms are apt to be passing away by the time political science apprehends them. Prof. Dunning has pointed out that at the time Aristotle by analysis of the political phenomena of the Greek city-state had devised the scheme of classification to which political science still adheres, the city-state itself had run its course and dominion was about to pass to the Macedonian empire. Likewise, when Polybius framed his theory of balanced powers of government, as exemplified in the Roman commonwealth that type of government was decaying and when Cicero expounded the same theory as the proper model of polity, the shadow of the approaching empire was already projected across

[4] *Political Science and Constitutional Law*, Vol. I, p. 58.

the ruins of the commonwealth. During the Middle Ages the imperial theory of government was never more fervently advocated by publicists than when imperial authority was moribund and the rise of nationality was the salient fact of the actual situation. Or, to come down to modern times, the received theory during the eighteenth century in England, was that of a balance between co-ordinate powers of government, although meanwhile the development of parliamentary institutions was taking place, the essential characteristic of which is the union of the executive and legislative functions in one organ of the national sovereignty. The theory of administration through co-ordinate powers of government still prevails in the United States although numerous phenomena demonstrate its inadequacy to any thinker who faces the facts.

When history thus advises that every succeeding form of political structure has seemed final to the people who lived under it, how can we be sure that the form which political science now takes as its objective reality is any exception to the rule? May not it too be transitory like the rest? Indeed, with such tremendous evidence of change all around us, can we doubt it? The instability of political forms is the most salient fact of modern history. Upon any broad survey of events the national, popular state itself is found to be in a condition of metamorphosis. Seignobos remarks of Europe that "every state has since 1814 changed either its political or social organization" and these changes have been accompanied by a series of wars and revolutions.[5] That the series has not ended there are many portents to apprise us. One has only to read the newspapers of the day for evidence. The institutions of self-government we are proposing to introduce among other races are not only recent in their formation but we are not ourselves contented with them or able to work them to our satisfaction. Representative assemblies, usually regarded as the structural principle of the perfect type, exhibit signs of corruption and decay. Everywhere there are indications of processes of change in industrial organization with accompanying

[5] Political History of Europe, Charles Seignobos, p. 834.

social and political transformations. Turbulent streams of influence are eroding old social strata, cutting out new channels and making new deposits, and whether these are mere flood ravages to be eventually cleared away, or whether new strata are being formed upon which future polity must rest, political science does not appear to be able to offer any opinion. The idea of permanence as regards the type, which persists in spite of such circumstances, is an illusion due to the ephemeral nature of human life. By giving a wider application to Mirabeau's remark, we may explain it by saying that events are great but men are small.

Such considerations lead us to conclude that not only does the scope of political science as usually defined leave it with but slight connection with practical politics, but that its foundations are not secure even in the restricted province which it has chosen for itself. This defective situation is a consequence of the subjective character of its method. Political science gathers its concepts from the mental deposits of our own race experience. Such terms as the state, government, sovereignty, citizenship, liberty, etc., are analyzed to determine their nature and to deduce therefrom the institutional principles of political organization. At one time the belief was entertained that principles so obtained were universal in their application and should guide enlightened statesmanship. The close of the eighteenth century was a period in Europe marked by a close alliance between political philosophy and statecraft, but the time came when the alliance was dissolved in mutual disgust and the word " ideology " was coined to discredit statecraft assuming to be founded upon scientific theory.

Since political science incurred that reproach a spirit of caution has characterized it which is probably to a great extent a reaction from the confident optimism that once marked its teachings. It still feels the shock of the French Revolution. Historical criticism has been so destructive of its former deductions that it is chary of offering new ones. Its present tendency is to avoid the statement of general principles and to limit the application of its abstract terms. Anthropological research has confirmed this tendency by exposing

the local and incidental character of the concepts shaped by civilization. We have come to realize that when we speak of the principles of political science what we really mean is general observations based upon the race-experience of a group of peoples whose culture rests upon Greco-Roman foundations. The present disposition of political science to confine itself to the civilized state as its proper subject is therefore really evidence of increase of knowledge. But at the same time it is evidence that as at present constituted, political science is incapable of being correlated with statesmanship as the source of the principles which guide and support the art of government. To occupy such a relation it must take for its subject-matter the nature of public authority whatever forms it may assume, elucidating their genetic order and formulating the laws of their growth and development. It must detach its abstract terms from the historical accidents of their origin and provide itself with a systematic terminology of definite significance. In fine, political science can not be held to be constituted as such until it is put upon an objective basis. It must experience the reconstruction which the general body of science has undergone at the hands of inductive philosophy, and take its place in orderly connection with natural history.

That politics have a natural history is implied by the accepted theory of the descent of man, but while the philosophical interest of the principle may be admitted it may be questioned whether it is practically possible to provide a scheme of classification for political science in accord with it. However great the difficulty may be, there seems to be no escape from it if political science is ever to be placed upon an objective basis, for the cardinal principle of that theory is that the development of humanity is but one phase of a process of development governed throughout by the same general laws, and hence it is impossible that we can understand any part of this process except in orderly relation to the whole process.

As to the possibility of defining the scope of political science in accord with this principle, it may be remarked that the idea has already been distinctly expressed. A theory which

regards the state not only as permanent and universal in the abstract but develops the idea with logical consistency in its historic application, was propounded in 1885 by Sir John Robert Seeley in lectures at Cambridge University. They were edited by Prof. Sidgwick and published in 1896 under the title "Introduction to Political Science." Pointing out that political science now concerns itself only with civilized states, excluding from consideration the wild and confused associations in which savages and barbarians may seem to live, Professor Seeley remarked: "An inductive system of political science must begin by putting aside as irrelevant the distinction of barbarous and civilized, and by admitting to an impartial consideration all political aggregates, all societies held together by the principle of government. We must distinguish and arrange the various kinds of the state in the same purely observant spirit which a Linnaeus brought to plants or a Cuvier to animals. We can no longer think of excluding any state because we do not like it, any more than a naturalist would have a right to exclude plants under the contemptuous name of weeds, or animals under the name of vermin." Referring to the fact that in the animal kingdom, the greater number among the large classifications are assigned to strange organisms in which the vital principle is developed in such a manner that the being has little external resemblance to what is popularly called an animal, Professor Seeley said that if political entities were studied by the same method, "It would not be surprising if all the states described by Aristotle, and all the states of Europe into the bargain, should yield but a small proportion of the whole number of varieties, while those states less familiar to us and which our manuals are apt to pass over in silence as barbarous, yielded a far larger number."

Political science so conceived would certainly be co-extensive with all forms of public authority and its general principles would be universal in their application. The construction of such a system of political science is difficult for reasons which have been well stated by Professor Sidgwick. He admitted that "political science aims like other sciences at as-

certaining relations of resemblance among the objects it studies; it seeks to arrange them in classes, or to exhibit them as examples of types," but in the present state of our knowledge a comprehensive survey of the field is not feasible. "If we try to begin at the beginning, as seems natural, we have to begin in almost utter darkness. If we are right to infer that our own political society descended by direct filiation from a group of the most politically undeveloped type . . . . a long part of the process of development must have taken place in prehistoric times. When the light of history first falls upon the societies to which the modern European state can be distinctly traced, they have all a distinct and complex political organization. Any inquiry into the first origin of political society carries us beyond history proper into speculation, conjecture, inference from analogy." [6]

In every branch of biological science, inquiry into origins goes beyond history proper, and there are many points in which the sequence of development is obscure and conjectural, but that is not rgarded as invalidating the method; and the proper scheme of classification is held to be one based upon genetic order, such as Professor Seeley proposed in political science. Upon examination it may be found that material available for use has already been accumulated in the general progress of science. Great light has been cast upon social origins in recent years and the results are of capital importance in removing difficulties now experienced both by political science and sociology in seeking valid definitions. The present state of our knowledge, it seems to me, should cause us to discard the traditional idea that the civilized state is the only true form of the state, other varieties possessing significance only as they can be classified in serial order antecedent to the formation of the civilized state. It is well known that in the East, populous states have been developed of high cultural attainment, which cannot possibly be ranged with the civilized state of the west in any serial order, but the difficulty is disposed of when we apply to the state the idea of variation of species, and

[6] The Development of European Polity, Henry Sidgwick, pp. 3, 27, 28.

conceive of political development as proceeding on divergent lines, with successions of supremacy as regards particular types. If in the present state of our knowlege we can not adopt a comprehensive scheme of classification, we can at least recognize the fragmentary and provisional character of the present system. We can base our classifications upon genetic order so far as it is traceable, and it so happens that in studies of comparative politics whose interest is most immediate and of greatest practical value to us in this country, the genetic order is historically evident. The Australian commonwealth, the Dominion of Canada, and the United States of America, are branches from one stem of polity, and a study of their structural development and variation might elucidate problems of our own politics, particularly as regards municipal government. The states of Central and South America are as obviously branches from another stem of polity.

Doubtless it will take the labors of generations of scholars to bring political science to a position of authority as regards practical politics, but certainly no undertaking could be more important or more inspiring to effort, since success means attainment of the power to give rational determination to the destinies of nations. It is hardly too much to say that political science transcends all other branches of science in practical value for it deals with the conditions underlying them, all art and science having their seat within the bounds of polity.

WHAT DO STUDENTS KNOW ABOUT AMERICAN GOVERNMENT, BEFORE TAKING COLLEGE COURSES IN POLITICAL SCIENCE?

A Report to the Section on Instruction in Political Science.

BY PROFESSOR W. A. SCHAPER,
UNIVERSITY OF MINNESOTA.

One day in March, 1903, a junior in the College of Engineering came to me to make up an entrance condition which, on account of an oversight, still stood against him on the books of the University. Under the rules regulating entrance, he was permitted to offer, among other things, a semester's work in American Government. This he chose to do. A few inquiries directed to the young man brought out the fact that he had once had a short high school course in what we still designate by that inane term "Civics," the worst faded out word in our educational terminology. Aside from this brief course of instruction, his information regarding American Government had been gleaned from reading one or two of the most elementary text-books on the subject, from the dailies, from an occasional article in some magazine, from common conversation and from participation in two elections.

This being the situation the following five simple questions were jotted down and submitted to him as a test:

I. Explain how members of Congress are chosen and state what you know about their terms, qualifications and compensation.

II. Write a brief account of the federal courts. What does the Constitution provide in regard to the establishment of a system of United States courts?

III. Describe clearly the process by which the Constitution of the United States may be amended. How may it be interpreted?

IV. Outline the government of a county in your state.

V. What is meant by the New England plan of township government?

These he answered in somewhat over an hour's diligent work. The results were very different from what might fairly be expected, so radically different, that the case set me to thinking. Gradually these pedagogical problems presented themselves: How much really definite and communicable information does the average mind contain on a given subject? Is the stuff put down on paper at a moment's warning in an hour's sitting a fair sample of what the person knows about the questions asked? Is it safe to assume, in giving instruction to beginners in Political Science in our colleges, that they are familiar with the rudiments of our governmental and party organization?

Questions like these had often arisen before in connection with the work of instruction and the planning of courses. For instance, in mapping out the first courses in Political Science there seemed to be a common impression that the American college boy above the sophomore year knows the essentials of our federal, state and local governments and is familiar with the current press and periodical discussions on political questions. On that assumption such courses as the Theory of the State, Comparative Government, Municipal Administration and Politics and Administration were offered. Why courses on topics of this kind were considered very difficult by the average upper classman was a mystery until the reading of that examination paper. That paper indicated that the beginner in political science brings to his work only a very meager equipment. How inadequate and utterly untrustworthy his information about his country's government may be in an individual case, the following answers to the three questions on the federal government will illustrate:

I. In choosing members of Congress, each state elects a certain number of Senators and Representatives according to number of inhabitants. The state is divided into congressional districts, and each district elects its mem-

bers by popular vote. They are allowed a certain amount per mile to cover traveling expenses, and receive $5 per day while Congress is in session. He must be a citizen of the United States who has privilege of voting and a resident of the country a certain length of time, and also a resident of the district which he represents for a given length of time. The state determines the qualifications of voters. Each house is its own judge as to whether its members should take their seats. A recent example is trouble about Utah Senator. Senator's term is six years; one-third elected every two years. Representatives elected every two years.

II. The Supreme Court has to deal with affairs which involve the Federal Government, and settles difficulties between states. It is the final court to which one can appeal for trial when the dispute is caused by interpreting the law.

III. The bill for amendment is first introduced and read in the House; it is then referred to a committee. If they approve of it, it is again taken before the House, discussed, and voted upon, or the committee may revise it before presenting it to the House. If it passes, it is then taken to the Senate. If it passes the Senate, it only remains for the President to sign it before becoming a law. If the President refuses to sign it, it can become a law provided it passes both houses by a two-thirds majority. The Supreme Court interprets the laws.

Apparently this young man was not aware of the fundamental fact that two senators are elected at large in each state by the state legislature irrespective of area or population. His conception of our judiciary was certainly not very complete nor very accurate. In a subsequent conversation he stoutly maintained that the Supreme Court is the only national court we have and that its function is to decide all "disputes caused by interpreting the law." By "law" he meant state and federal statutes, and by "interpreting" he meant construing the meaning of a statutary provision. It also became clear that he was wholly unaware of the distinction between American constitutional law and statute law

and the peculiar function of our courts in guarding the constitution against infringments. His statement that Congress can amend the constitution by bill seems astonishing. There is a grave suspicion in my mind that to him amending a law and amending the constitution were one and the same thing. Further investigations seem to indicate that such a suspicion was nearer the truth than we like to admit. They certainly show that the want of understanding of our judiciary and the process of amending the constitution shown in this case is very common.

This examination paper surely opens up an interesting line of inquiry. Here is a young man 24 years of age, of New England parentage, who has passed through a system of graded schools, a good average high school in a thriving western town and reached the junior year in a high grade technical school, who has read a daily paper for several years, voted in two elections and who apparently is unable to write an intelligent account explaining the simplest rudiments of his country's government. Whatever the facts might indicate in this particular case, the questions it raised seemed to warrant an investigation.

The first point to determine was plainly, have we here an exceptional case or is it fairly typical? In order to satisfy myself beyond a doubt on that question, the identical test was given to a class of 28 seniors in the College of Engineering. These students were all graduates of high schools, thoroughly tested by a rigid training in the rather severe engineering courses but who had taken none of the college courses in the social sciences. In fact the test was given to them on the day they presented themselves for their required work in Politics and Economics, a two-hour course running through the senior year.

The results of this test entirely confirmed the previous inferences. They showed that the original case was remarkably typical. The test was repeated to a similar group of students in 1905 with almost precisely the same results.

Under the present elective system it is to be expected that those high school boys who look forward to an engineering

career will omit courses in the social science group and elect heavily in the physical science and mathematical groups. Therefore we should expect the least training in problems of government among this particular group of students. But there were indications that many students in the academic courses had likewise very generally omitted courses on history and government. Of course, under our present system of free election, beyond a certain fixed minimum, it is perfectly possible to go through the grades, the high school, and get a college degree without necessarily having taken a single course in either American History or American Government. The report of the United States commissioner of education for 1902 shows that from 15 to 30 per cent. of our students are taking work in American Government in the secondary schools of our various states.

This being true it seemed advisable to offer in the University an elementary course on American Government. The course was opened to sophomores and upper classmen. It became apparent at once that such instruction was meeting the needs of a large number, over one hundred elected it last year, the second time it was offered. This year there are 175 taking that work.

This class afforded an excellent opportunity for further observation and inquiry among an entirely different group of students, those pursuing the academic courses. This experience demonstrated clearly that such expressions as: majority, plurality, election at large, pure democracy, representative democracy, centralization, decentralization, grand jury, petit jury, common law, statute law were so many words without any definite meaning. The most elementary features of our federal system, the composition of our legislatures, their organization and the simplest rules of procedure, our system of courts, the method of making nominations and electing men to office, all required careful explanation and study. In fact the subject seemed to be brand new to a large number, among them a considerable proportion of juniors and seniors.

Satisfied that such was the local situation, it seemed very desirable to determine whether this deficiency in political edu-

cation was confined to one state or whether it was true of the whole country. Accordingly in September, 1905, a plan was formed for having the identical test given in a number of typical American universities under as nearly the same conditions as possible. The directions were to give the test to two distinct groups of students as far as possible, to seniors in the courses in engineering, and to sophomores, juniors and seniors in the academic courses who had taken no college courses in Political Science or American History. No previous notice was to be given of the examination and an hour was to be allowed for the work. The students were to understand the purpose of the investigation and be urged to answer the questions conscientiously.

In addition to the five questions put to the original group, it was found very instructive to ascertain the following facts:

I. Age at nearest birthday.
II. Nationality.
III. Where prepared for college, giving name of the school.
IV. Time given to American Government in the grades, in the preparatory school.
V. Time given to American History in the grades, in the preparatory school.

The questions were sent to 13 institutions; of these 10 gave the test and sent in their papers. Adding to them the papers collected here, there were in all 10 sets from academic students and five from engineering students. The papers were all read and graded on a scale of 100. Selecting the papers from the academic students of ten universities we get the following figures:

No. of students.	Av. age.	I. Av. %.	II. Av. %.	III. Av. %.	IV. Av. %.	V. Av. %.	Total. Av. %.
238	20.6	12.4	7.2	5.6	9.5	6.5	41.3

In the following tables the total points scored by each institution are given and the papers are arranged into two groups:

FOUR EASTERN UNIVERSITIES.

No. of students.	Av. age.	I.	II.	III.	IV.	V.	Total.	Av.
36	21	282	111	63	168	274	898	25
*13	—	133	51	25	74	38	321	25
23	19	202	109	110	136	72	629	27
25	21	342	156	149	190	214	1051	42
Total 97	Av. 20.4	9.8	4.4	3.6	5.8	6.1	29.8	

* Freshmen.

SIX MIDDLE-WESTERN UNIVERSITIES.

No. of students.	Av. age.	I.	II.	III.	IV.	V.	Total.	Av.
43	20	633	375	198	374	145	1725	40
18	20	227	113	29	204	31	604	33
9	22	134	64	45	76	93	412	46
24	20	334	213	235	320	219	1321	55
31	21	444	358	300	433	251	1786	57
16	19	235	207	174	280	207	1103	69
Total 141	Av. 20.8	14.2	9.3	6.9	11.9	6.7	49.2	

In order to show the range of marks the five highest and five lowest were selected from each institution and averaged with the following results:

FOUR EASTERN UNIVERSITIES.

	Five highest.		*Five lowest.*	
No. of students.	Av. age.	Av. standing.	Av. age.	Av. standing.
36	20.6	67.2	20.6	0.4
*13	——	47.4	——	6.5
23	20.4	61.8	18.2	1.4
25	21.8	73.8	20.0	21.0

* Freshmen.

FIVE MIDDLE WESTERN UNIVERSITIES.

	Five highest.		*Five lowest.*	
No. of students.	Av. age.	Av. standing.	Av. age.	Av. standing.
43	21.6	75.2	19.6	10.6
18	25.8	66.6	20.6	3.2
24	19.8	79.8	20.4	23.8
31	20.8	89.4	22.0	15.8
16	19.8	84.4	20.0	48.2

9—Omitted on account of the small number.

The results obtained from four classes of engineering students in three different institutions are shown in the following summary:

		Total Points Scored.						
No. of students.	Av. age.	I.	II.	III.	IV.	V.	Total.	Av.
31	21.1	358	146	39	410	58	1011	32.6
*18	——	251	78	32	48	23	432	24.0
36	22.2	327	153	14	188	5	687	19.0
27	24.0	357	193	136	117	57	861	31.8
Averages....	22.3	11.5	5.0	1.9	6.8	1.2		26.7

* Freshmen.

The directions were not strictly followed in some institutions. In two cases the test was given to freshmen only, as indicated in the tables. In two institutions some students who had taken college work in either Political Science or American History, or both, took the test. Those who took the History courses only averaged 48 and 46 respectively. Those who had taken courses in Political Science only, or in both, averaged 81 and 80 respectively. The student who made the best mark in the latter group happens to be a young woman. There was not a sufficient number of women students among the 141 in the western group (and of course none at all in the eastern group) to show any particular results, excepting that in no case was the low average due to them. Apparently the practice of the young women in electing courses in the social sciences varies greatly in our coeducational institutions. In some universities only a very few elect in these sciences, while in others they elect quite generally.

The figures given are of course not an *exact* measure of either the accuracy or the comprehensiveness of the answers. It was found impracticable to reduce the marks to an absolute scale, because the great majority of the replies were meager and very inaccurate. The figures must be taken therefore as an estimate of the relative worth of the papers, graded according to what was considered a fairly accurate and a reasonably full

answer. For example, if an answer to the first question showed that the student understood that there were two houses of congress, a Senate and a House of Representatives and that each state had two senators, elected by the legislature, and representatives in proportion to population elected by the voters in congressional districts, a mark of 16 was allowed and four additional for a reasonably correct statement of the facts as to terms, qualifications and compensation. In those cases where "members of congress" was taken to mean "congressmen" in the popular sense and where the election of members to the lower house was accurately stated, a mark of 10 or 12 was given on the theory that the student misread the question and could have stated the facts in regard to the senate with equal accuracy had his attention been called to the omission. In the same way, where in answering the third question the student gave one process of amending the constitution correctly but failed to mention the other alternative, a mark of 15 was granted.

In spite of liberal allowances of this nature, the general level of standings was exceedingly low for the entire group of 350 students. There is, however, a noticeable difference between the eastern and western groups, a difference which any one glancing through the papers would readily notice. It is rather surprising to find the young men in some of our middle-western states giving better accounts of the New England town government than their cousins in some instances in the New England and middle states. This may be accounted for partly by the fact that a larger proportion of the young men in our western universities come from the country and the small towns where they come in more direct contact with rural local government, which in these states is based on the town meeting. It is evident that those boys who have grown up in large cities are generally quite unfamiliar with rural local government. But perhaps the explanation in most cases is to be found in the fact that a larger number of boys in the graded and high schools of the middle-west have studied manuals on our government, which usually give a good account of the New England town meet-

ing, and its influence on the development of rural local government of the western states. At least an analysis of the facts given in regard to the work of the different students in the grades and the preparatory schools on American History and American Government would seem to indicate that.

It was found impossible to determine the relative amount of time each individual had put on the two subjects, because the statements could not be reduced to comparable units. Therefore the figures were compiled so as to indicate how many had taken the subjects and how many had omitted them entirely in their courses below the college. The facts compiled in this way indicate that out of 84 in the eastern group, 17 said that they had taken work in American Government in the grades, and 67 had not. In the preparatory or high school 27 out of 84 said they had taken the subject, while 57 had not. In the western group out of 114 students for whom the facts were at hand, we find that 22 had taken some work on American Government in the grades while 68 had not. In the preparatory or high school 82 had taken it while only 32 had not. The facts in regard to the work in American History seem to be these: eastern group, 26 out of 84 took it in the grades, 58 did not; 48 out of 84 took it in the preparatory, 36 did not; western group, 50 out of 89 had it, 39 had not; in the preparatory 82 out of 114 had it, 32 had not taken it.

There is a vague idea afloat that those communities which have been settled by recent arrivals from Europe and their children are handicapped in managing their government because of the lack of information about our political institutions among this class of American citizens. This idea is hardly tenable, so far as the college boys are concerned. On the contrary when it comes to writing an intelligent account of our government, it is not so much long residence and our forefathers that count as a clear head and systematic training in the subject. At any rate there is no indication that the sons of the colonials tend to crowd up to the top of the column and the sons of the recent arrivals cluster about the foot. It may be an accident but the college group that

counted among its number 4 of colonial stock, 4 of German, 5 of Scandinavian, a Belgian, a Hungarian, a Pole and 13 of mixed Swiss, German, English, Scotish, Irish, Scandinavian and American colonial descent stood first on average for the five best, and second on general averages. In the little group of five best there appeared one of English-Scotch parentage, one of German, one of German-American, one of Swiss-American and one of Norwegian parentage. The hyphenated words in each case mean mixed stocks. It so happens that no colonial American appeared in the list of five highest, but one appeared in the list of five lowest.

On the other hand in the group of students that stood first on general averages there were only two that were not of colonial parentage. In the eastern group that made among the lowest standings there were 30 of pure American stock and only 6 of other parentage. The following table indicates the number of each nationality in each group of students:

	Eastern Universities.				Western Universities.					
American	30	17	16	..	4	19	4	14	29	15
German	1	..	..	..	..	1	4	..	..	..
Mixed	5	3	2	..	4	1	13	2	9	2
Jewish	..	3	5	..	..	..	..	..	1	..
English	..	2	..	..	..	2	2	..	..	1
Canadian	..	..	..	..	1	1	..	..	..	..
Norwegian	..	..	..	..	..	..	2	..	2	..
Swedish	..	..	..	..	..	..	2	..	2	..
Danish	..	..	..	..	..	..	1	..	1	..
Belgian	..	..	..	..	..	..	1	..	..	..
Hungarian	..	..	..	..	..	..	1	..	..	..
Polish	..	..	..	..	..	..	1	..	..	..
Not given	..	..	..	13	..	..	..	..	..	..

The 141 students in the middle-western group came from the following states in the numbers indicated:

Wisconsin	36	Utah	3
Minnesota	33	South Dakota	2
Iowa	25	Oregon	1
Missouri	18	Massachusetts	1
Illinois	15	Ohio	1
Michigan	5	Canada	1

The 97 students in the eastern group hailed from the following states in the numbers indicated:

New York	28	Missouri	1
Massachusetts	23	Minnesota	1
Pennsylvania	15	North Dakota	1
Connecticut	12	Indiana	1
Rhode Island	8	West Virginia	1
New Jersey	3	Germany	1
New Hampshire	2		

The human short-comings laid bare in a rapid-fire test of the kind given, can be appreciated only after laboring through these 350 papers covering over 1,400 pages of manuscript. At first the blunders provoke a smile, occasionally an outright laugh. They seem to be mere blunders, the jokes that make human frailities seem funny. But when case piles upon case you begin to fear that the want of information about the government and the utter want of comprehension of our political system may be the rule, not the exception among this much favored class of the rising generation. Under those circumstances one is apt rise from an hour's reading of the papers thinking in a very serious vein. It makes one appreciate the problems of popular education, of securing co-operation for bettering the organization and administration of the government, local, state and national.

A glance at the tabular statements on the preceding pages indicates that the most points were scored on the first question, the one concerning the election of members of Congress. It seems to be due to the general publicity of the matter. A large portion of the information of some seems to have been gleaned from the newspapers, election posters and election returns, or common talk, hence the marks on the five questions tend to vary somewhat in proportion to the relative prominence of the topics in the public discussions. Information picked up in this way bears unmistakable ear-marks, by which it may be easily identified. If it is not supplemented by systematic study it is very apt to degenerate into a kind of brash talk about the government and men in public life that is not exactly wholesome.

An examination of the defective answers will reveal more clearly what these papers contain than averages and percentages. First let us examine a typical case of a very poor paper. It was marked by the instructor, "Recommended for the permanent archives." It is one of a dozen or more found in the lot and is reproduced in full.

PART I.

I. Age 20.
II. American.
III. ....
IV. Never studied Civics.
V. Two years.

PART II.

I. The members of Congress are chosen by use of the Australian ballot system. The term of office of the members of Congress is four years in most all cases.
II. ....
III. If the Constitution of the United States is to be amended, it has to be brought before the House and voted upon.
IV. The county government has the following officers:
County clerk.
County auditor.
County attorney.
Judge of the court.
Constable and sheriff.
County treasurer.
V. ....

Here are some of the choice bits of information found in various papers in reply to the first question:

"Members of Congress are chosen by a congressional assembly or board. The candidates for Congress are chosen at the caucus or primary election in the spring (in April). The members of the congressional assembly are chosen at this same caucus. After they have been chosen they meet in some county-seat within the congressional district. Here they vote by ballot for the Congressmen, or men who are to represent that district. This is as near as I can remember it from my study of the const. of . . . ."

"At the regular election a certain No. of men, one for each district (the size of the dist. depends upon the population) is voted upon and elected. These persons who are thus elected are the ones who elect our senators. They meet at a certain time after election and cast their ballots for a senator, as is required for election."

This idea that our representatives and senators are chosen by a sort of convention or some sort of an electoral college recurred a good many times in these papers, at least eleven instances being recorded in my notes. Several have "congressmen" elected by the state legislature; some distinguish between a "state congress" and a United States congress. Some have senators elected by the state senate, others have them elected by "popular election in some states." A very considerable number seem to have an idea that Congress is one body. Some who knew that there is a senate were hardly better off, for the apportionment of the senators among the several states brought them into difficulties, which several disposed of by allowing one to a state, another contingent would assign senators in proportion to population, finally one of those in this predicament, tottering on the brink of truth, put down "two for each average state."

The ideas in regard to the length of the terms of senators and representatives are equally diverse. They vary from one to six years, for either or both. A very large number think both serve for four years. Several have "senior" and "junior" senators serving for different terms.

As to qualifications the replies are equally original in many cases.

"A man to hold the seat in congress must be over 30 yrs. of age, a citizen of the U. S. able to read and write the English language."

"The predominating qualification of a U. S. senator is to be able to tell funny stories for publication and go to church regularly. He should also contain a smattering of law."

"The political machine puts up a 'safe' man, has him apparently endorsed by the voters, and the various candidates are voted upon by the voters of the congressional district after a lurid cam-

paign of red-fire, beer and promises. They serve for two years, must be male citizens (though constitution says nothing of sex) of at least twenty-five years of age. They get besides little trifling fees from corporations, railroads, etc., $5,000 from the U. S. treasury."

"They must be 25 yrs. old and have committed no crime of which they have been convicted."

"A senator must be a resident of the state which chooses him, and an upright citizen." (As an afterthought he crossed out all after the comma.) "He must be of sound mind."

The salaries of members of congress was fixed all the way from $5 per day to $15,000 per year. One had senators elected by districts and paid for out of district funds.

The second question, the one on the judiciary brought out a less picturesque series of blunders, but many blanks and many hopelessly incorrect ideas. A very considerable proportion of the 350 students did not realize that we have two distinct systems of courts, a system of federal courts and a system of state courts in each commonwealth. They had an idea that our judiciary is one system beginning with the police court and ending with the supreme court in Washington, which they seemed to think of as the fountain head of law and authority and the only national court in the country. Only a mere handful seem to have grasped the idea that our courts stand guard over our constitutions, preventing encroachments and interpreting their meaning in law suits and in law suits only. Now and then a student showed that he knew that the supreme court of his state is the final authority in construing the state law and the sate constitution.

The following answers are quoted in full:

"Any case which cannot be settled by the county courts is left to a court or trial before a jury appointed and paid by the government. These juries make it their business to settle disputes which are referred to them and criminal cases."

"The courts of the United States are as follows:

The Supreme Court.
The Circuit Court.
The Criminal Court.
The Juvenile Court.

The lower courts are the last mentioned, and all murders, thefts & any crime of this sort are tried in the criminal court.

The juvenile court. Here all the people below the age of 21 for men and 18 for women are tried; sentences are made to the reformatory, etc.

Circuit Court tries all law suits involving money suits, etc.

Any case may be repealed to the upper court, namely, the Supreme Court. Its decision is final. It can reverse the order or affirm the order of the lower courts."

"Federal courts consist of a judge, jury and prosecuting attorney."

"The federal courts were supplied to meet a demand for accessible courts where small cases could be tried without taking them to the higher or supreme court."

At least two, one a senior, remarked "federal courts is only a name to me." Many others who left a blank, probably found themselves in the same difficulty.

The answers to the third question were generally very wide of the mark. In some universities the majority stated that the constitution can be amended by a bill in congress passed by a vote ranging from a bare majority to four-fifths, the greater number favoring a two-thirds vote. Only a handful gave even an approximation to a correct answer. Nearly all held that the President can veto an amendment but that Congress can overcome it by repassing the amendment by an increased vote of some sort. Not a few thought that the approval of the Supreme Court was needed, others that the voters at the next election must ratify the action of the authorities at Washington or that the states must in some way give their unanimous consent.

A few of these peculiar ideas are shown in the following answers given in full:

"The constitution of the United States may be amended by a two-thirds vote of the Senate with the consent of the president, and can be interpreted by being published in the official paper at Washington, and may be placed with the amendments in its proper place."

"The constitution of the United States may be amended by a

three-quarters vote in favor of the amendment of the House and Senate combined. A certain number of signatures of the people attached to an appeal for a vote on a certain topic for amendment may call the attention of congress to the topic in question and require Congress to vote on it. The President may interpret the constitution, and if his interpretation is not suitable, congress may be called upon to give an interpretation."

The description of county government was exceedingly vague, excepting in the papers from some of the middle-western universities. It is quite plain that this difference can be accounted for by the fact that a very large number of the boys had lived in the country and had their attention directed to the subject in the schools. But even in these papers there is room for great improvement in the understanding of rural local government.

Statements like this were frequently the only information offered:

"I know only two county officers, the sheriff and the county clerk, and my ideas of county government are the vaguest." Some frankly said: "Don't know enough to write" or left a blank.

The following attracted my attention among others:

"Since I live in a city composed of four counties, and since the county government is swamped by the city and borough governments, I am, I hope, excusable for not knowing too much thereof. I know that there is a sheriff and county clerk. This am convinced of by campaign posters. Further my knowledge runneth not."

"The government of Worcester county, in . . . . ., is not very well known to me. I have never studied the government of the county."

"I have always lived in a city, and never walked behind a plough."

A reference to the New England town meeting in a lecture, or in a book must convey a very attenuated notion to a con-

siderable percentage of the young people in our colleges, if this experimental test means anything. A very large number left blanks. Others offered information in this vein:

"I know nothing of them excepting that they often stand as models of (town) government and are even advocated in place of city government."

"The New England plan of township government is not clear to me. I think it is local option, Home rule."

"I never heard of the New England plan of township government. I have only been in the East six weeks."

"Township is only a name to me." One lad of the East declares and another triumphantly assails the knotty problem in this fashion:

"The New England system of governing its townships is the mayor, at its head, board of alderman, City clerk, town clerk, board of public works and education, etc. In short, by boards, and mayor for all different branches of town or city life and business."

Some volunteered very interesting comments like the following:

"Have not studied American History since I was 13 years old, but remember the Boston tea-party."

"No time given to Civics in Prep. School. No time given to American History in the Prep. School, because Roman and Greek History were required for . . . . . College, and I did not have time to take American History offered in preparation for . . . . . , excellent tho it was."

"I have never studied the constitution, but remember the preamble that all men are free and equal, and are considered innocent until judged guilty, and all men have rights of trial by jury."

"I had Civics and American History in the lower schools, a couple of years each, but it was a long time ago and never took any thorough course in either."

"I spent the last year of my grammar school in studying the government of the U. S. This was the only time the U. S. government was taught me. For I did not have any course in the high school at all. What I do know about the government I have learned through reading, when I had any spare time."

"I did not take American History in my course, as I did not have time to get it in, and I am grossly ignorant on American Government."

"Took American History one year in the 8th grade. Never took Civics; it was not taught at that time in the High School except as a post-graduate subject, and as a result I know very little of the following questions, not enough to write upon. I am sorry to say and also surprised to say."

"American Government five months in the High School. That was in my last term senior year, and it was elective. If enough agreed to take it, why the class had it."

"Notwithstanding the fact that I had some Civics in connection with a course in American History, I can remember practically none of it. Time given to American History about 8 months."

"I have never studied Civics, and these few, simple questions of yours have startled me on learning that I know so little or nothing about the United States government."

It is only fair to emphasize the fact that this test was given to that portion of our college students who had not yet taken college courses in Political Science or who did not intend to take such courses. The papers written by a small number who did take work along this line were of a very different order. Indeed the five best papers in all the colleges were fair, in some they were exceedingly good. Boys of 19 and 20 in some cases showed an insight into our governmental system, a maturity of judgment, and a political good sense that contrasts very strongly with the vague, inaccurate and often flippant responses of others several years older.

It is to be hoped that the ranks of our legislators, judges, and other public officers will in the future be recruited from that large and growing class of young men who are making a special study of Economics, Politics, Sociology and History in our Universities. It is impossible to believe that our political training by bill-boards, newspaper head-lines and stump speeches makes for a well-informed, enlightened, well-poised citizenship or furnishes a good foundation for a career in law, journalism or the government service. That there

has been a phenominal growth in the last ten or fifteen years in the field of the social sciences, in the way of scientific research and instruction, no one can have failed to notice, who is at all familiar with recent advances in our universities. Not all of our great universities have fallen into line in promoting this work, a few permitting themselves to be outstripped by the younger, state-fostered institutions which are closer to the people. But on the whole the facilities offered today for fitting a young man systematically and thoroughly for a public career are immeasurably superior to anything an American university could have offered 25 years ago, or in most cases even 15 years ago. This impetus given to researches in Economics, Administration, Legislation, Political Parties and social conditions generally, has not been without its effect on the public service. Some of the most important reforms undertaken in recent years were made possible through the carefully trained men turned out by the universities. The number of these men holding bachelor's and doctor's degrees in some of the departments of the federal service is very considerable already, and the demand for trained men is sure to increase.

There is every reason to think that the day is not far distant when the training with which our attorneys, judges and administrative officers enter their careers will be as much superior to the training of those now entering those pursuits, as the training with which a chemist or an engineer who now enters upon his career is superior to that of his predecessor of 25 years ago. It is to be feared, however, that in most cases those who enter our colleges of law bring to the strictly technical training there usually given, no better equipment than that of the students who took this experimental test. Indeed I venture a guess that it is on the whole poorer. Does this defective training of our young men in the social sciences help to account for the fact that the name of "statesman" has almost gone out of use except as a term of derision? Does it account for the inconspicuous part taken by college men in American politics in the past?

Before the training of men for the legal profession, for jour-

nalism and the public service can be put on a sound basis, however, the amount and the grade of work on American History and American Government in the secondary schools must be vastly improved. Educators may differ as to what constitutes an education or what is the best equipment with which to send a young man out into the world to do his life work, but I submit that there are three essentials we cannot afford to neglect. The first is the command of the English language, the ability to speak and write English with a reasonable degree of accuracy and fluency. This accomplishment has been made a definite requirement in some of our universities. The requirement is stated in the rules and is systematically enforced. A special examination is given each year at Minnesota and all those who fall below 75 per cent are required to take special work in English before they can present themselves for a University degree. There can be no denying the essential justice of such a requirement nor its wholesome stimulating effect upon the entire school system where it prevails.

Has not the time come when we should add a second and a third requirement? They are, a reasonable acquaintance with our country's history and a fair understanding of our country's government. If it be true that the best claim that our schools have upon support from the public treasury is that they make for better citizenship, then I cannot understand how we can much longer avoid making the understanding of our government and our national history an essential requirement for graduation, at least in those states where the entire educational system, from the primary to the University, is maintained by public agency. Should such a step be taken and every candidate for a college degree be required to have attained a certain proficiency in American Govrenment and American History, that work would receive a decided impetus throughout all the schools and would have a salutary effect on our citizenship. Its influence would soon be diffused among a great number by the teachers who go out from our doors in large numbers every year. The elements of American Government and American History should be made

college entrance requirements, so that no young American citizen attending a college can hereafter say:

"I have never studied Civics, and these few simple questions of yours have startled me on learning that I know so little or nothing about the United States government."

REPORT OF THE MEETING OF THE SECTION ON COMPARATIVE LEGISLATION OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION.

McCoy Hall, Johns Hopkins University,
Baltimore, Md., *December* 28, 1906.

The meeting was called to order at eight: fifteen p. m., by Jeremiah W. Jenks, chairman. The minutes of the Committee on Comparative Legislation, to which this section succeeded, were read and filed. The chairman outlined the subjects which had been deemed advisable to take up for discussion at the meeting.

After an informal discussion, the following actions were taken:

(1) Voted on motion of Dr. George W. Scott that a committee be appointed by the chairman on Classification of Comparative Legislation.

(2) Voted on motion of Dr. Robert Whitten that a committee be appointed by the chairman on Bibliography of Legislation.

(3) Voted on motion of Dr. Arthur K. Kuhn that a committee be appointed by the chairman to consider the means and to take such action as may be necessary to promote actively the project of an index of legislation.

The chairman announced that he would, after consultation with various members of the Section, report the committees later.

The committees have been appointed as follows:

(1) *Classification of Comparative Legislation*—

George Winfield Scott, Library of Congress, Washington, Chairman.

L. D. Clark, Bureau of Labor, Washington.

Martin S. Decker, Interstate Commerce Commission, Washington.

E. Dana Durand, Bureau of Corporations, Washington.
Ernst Freund, University of Chicago, Chicago.
Arthur K. Kuhn, New York City.
Munroe Smith, Columbia University, New York.
Robert Whitten, State Library, New York.

(2) *Bibliography of Legislation*—

A. P. C. Griffin, Library of Congress, Washington, Chairman.
Robert Brooks, Swarthmore College, Swarthmore.
Charles McCarthy, Free Library Commission, Madison, Wis.
Vladimir Simkhovitch, Columbia University, New York.
Robert Whitten, State Library, Albany, New York.

(3) *Ways and Means for Promoting an Index of Legislation*—

Albert Shaw, President of the American Political Science Association, Chairman, New York.
Frank J. Goodnow, Columbia University, New York.
Jeremiah W. Jenks, Cornell University, Ithaca, N. Y.

There will be additional members appointed on some of these committees.

INDEX.

Baldwin, Simeon E., Address, The Comparative Results in the Advancement of Private International Law of the Montevideo Congress of 1888-9, and the Hague Conferences of 1893, 1894, 1900, and 1904, 73 ff.

Cabinet and Congress, Address by Mary L. Hinsdale, 126 ff.

Comparative Legislation, Report of meeting of section of, 229 f.

Constitution of the Association, 5 ff.

Corrupt Practices and Election Laws in the United States Since 1890, address by George L. Fox, 171 ff.

Council, Meeting of, 26.

Daniels, W. M., Address, Municipal Ownership, 105 ff.

Election Laws and Corrupt Practices Laws, Address by George L. Fox, 171 ff.

Ely, Richard T., Discussion of Municipal Ownership, 123 f.

England and the United States, The Relations of, as Affected by the Far-Eastern Question, Address by A. S. Hershey, p. 59 ff.

Executive Discretion, The Growth of, Address by F. J. Goodnow, 29 ff.

Fairlie, J. A., Discussion of Municipal Ownership, 116 f.

Ford, H. J., Address, The Scope of Political Science, 198 ff.

Forrest, J. D., Discussion of Municipal Ownership, 119.

Fox, George L., Address, Corrupt Practices and Election Laws in the United States Since 1890, 171 ff.

Goodnow, Frank J., Presidential Address, The Growth of Executive Discretion, 29 ff.

Hart, Albert Bushnell, Address, The Realities of Negro Suffrage, 149 ff.

Hershey, A. S., Address, The Relations of England and the United States as Affected by the Far-Eastern Question, 59 ff.

Hinsdale, Mary L., Address, The Cabinet and Congress; An Historical Inquiry, 126 ff.

Howe, F. C., Address, The Case for Municipal Ownership, 89 ff.

Instruction in Political Science, Report by W. A. Schaper, 207 ff.

Jenks, J. W., Report of Meeting of Section on Comparative Legislation, 229 f.; Discussion of Municipal Ownership, 122 f.

Kuhn, Arthur K., Discussion of The Comparative Results of the Montevideo Congress and the Hague Conferences, 87 ff.

Latané, J. H., Address, The Use of Neutral Waters by Belligerents, 45 ff.

Maltbie, Milo R., Discussion of Municipal Ownership, 118 f.

Marburg, Theodore, Address, State Interference, 187 ff.

Martin, John, Discussion of Realities of Negro Suffrage, 166 f.

Members of the American Political Science Association, List of, 9 ff.

Mitchell, S. C., Discussion of Realities of Negro Suffrage, 167 ff.

Montevideo, Congress of, 73 ff.
Municipal Ownership, Address by W. M. Daniels, 105 ff.
Municipal Ownership, The Case for, Address by F. C. Howe, 89 ff.
Negro Suffrage, the Realities of, Address by A. B. Hart, 149 ff.; The Constitutional Point of View, by J. C. Rose, 166 ff.
Neutral Waters, Use of, by Belligerents, Address by J. H. Latané, 45 ff.
Officers of the American Political Science Association for the Year 1905, 7; for the Year 1906, 8.
Political Science, Instruction in, Report by W. A. Schaper, 207 ff.; Scope of, Address by H. J. Ford, 198 ff.
Presidential Address by Frank J. Goodnow, 29 ff.
Program of Second Annual Meeting of the Association, 27 f.
Racial Distinctions in Southern Law, Address by Gilbert T. Stephenson, 170.
Realities of Negro Suffrage, Address by Albert Bushnell Hart, 149 ff.
Relations of England and the United States as Affected by the Far-Eastern Question, Address by A. S. Hershey, 59 ff.
Report of Secretary, 21; of Treasurer, 19.
Rose, John C., Address, Suffrage Conditions in the South, 166.
Rowe, L. S., Discussion of Municipal Ownership, 113 f.
Schaper, William A., Report of, on Instruction in Political Science, 207 ff.
Scope of Political Science, Address by H. J. Ford, 198 ff.
Shaw, Albert, Discussion of Municipal Ownership, 121 f.
Secretary, Report of, 21 ff.
Shepherd, H. E., Discussion of Negro Suffrage, 169.
Southern Law, Racial Distinctions in, Address by G. T. Stephenson, 170.
State Interference, Address by Theodore Marburg, 187 ff.
Stephenson, Gilbert T., Address, Racial Distinctions in Southern Law, 170.
Thurber, F. B., Discussion of Municipal Ownership, 124 f.
Treasurer, Report of, 19.
Use of Neutral Waters by Belligerents, Address by J. H. Latané, 45 ff.

DATE DUE

GAYLORD

PRINTED IN U.S.A.

JA
28
.A4P7
1905
W

001091

American Political
Science Association.
Proceedings ...

Date | Name

JA
28
.A4P7
1905
W

001091

American Political
Science Association.
Proceedings ...

ISSUED TO

JA
28
.A4P7
1905
W

001091

American Political
Science Association.

Proceedings ...

CARRIE RICH MEMORIAL LIBRARY
CAMPBELL COLLEGE
BUIES CREEK, N. C.